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Supreme Court, U.S.
FILED
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No. 02-322

# In the Supreme Court of the United States

UNITED STATES DEPARTMENT OF THE TREASURY, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, PETITIONER

*v.*

CITY OF CHICAGO

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

## JOINT APPENDIX

THEODORE B. OLSON
*Solicitor General*
*Department of Justice*
*Washington, D.C. 20530-0001*
*(202) 514-2217*

*Counsel of Record*
*for Petitioner*

LAWRENCE ROSENTHAL
*Deputy Corporation Counsel*
*of the City of Chicago*
*City Hall, Suite 600*
*121 North LaSalle Street*
*Chicago, Illinois 60602*
*(312) 744-5337*

*Counsel of Record*
*for Respondent*

**PETITION FOR A WRIT OF CERTIORARI FILED: SEPTEMBER 3, 2002**
**CERTIORARI GRANTED: NOVEMBER 12, 2002**

248 pp

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UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

---

No. 01-2167

CITY OF CHICAGO, PLAINTIFF-APPELLEE

*v.*

UNITED STATES DEPARTMENT OF TREASURY,
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,
DEFENDANT-APPELLANT

---

**DOCKET ENTRIES**

| DATE | PROCEEDINGS |
|---|---|
| | * * * * * |
| 5/7/01 | Private civil case docketed. [01-2167] [1397663-1] |
| | * * * * * |
| 7/5/01 | Filed 15c appellant's brief by TREA. Disk filed. [01-2167] [0-0] (chuc) |
| 7/5/01 | Filed 10c appendix by Appellant TREA. [01-2167] [1414006-1] (chuc) |
| 10/4/01 | Filed 15c appellee's brief by City of Chicago. Disk filed. [01-2167] [0-0] (cerr) |
| 11/6/01 | Filed 15c appellant's reply brief by TREA. Disk filed. [01-2167] [0-0] (odea) |

| DATE | PROCEEDINGS |
|---|---|
| | * * * * * |
| 1/16/02 | Case heard and taken under advisement by panel: Circuit Judge William J. Bauer, Circuit Judge Ilana D. Rovner, Circuit Judge Ann C. Williams. [01-2167] [1470605-1] (broo) |
| | * * * * * |
| 1/16/02 | Case argued by Steve Frank for Appellant TREA, Lawrence Rosenthal for Appellee City of Chicago. [01-2167] |
| | * * * * * |
| 4/25/02 | Filed opinion of the court by Judge Bauer. AFFIRMED. Circuit Judge William J. Bauer, Circuit Judge Ilana D. Rovner, Circuit Judge Ann C. Williams. [01-2167] [1397663-1] (amyd) |
| 4/25/02 | ORDER: Final judgment filed per opinion. With costs: y. [01-2167] [1501757-1] (amyd) |
| 6/10/02 | Filed 30c Petition for Rehearing and Petition for Rehearing Enbanc by Appellant TREA. Dist. [01-2167] [1515771-1] (tiff) |
| 6/10/02 | Filed motion by Fraternal order of Police to file amicus brief. [1515783-1] 30c amicus brief in support of Petition for Rehearing En Banc. tendered. [0-0] [01-2167] (hard) |



| DATE | PROCEEDINGS |
|---|---|
| 6/11/02 | Sent clerk's copy of request to Appellee City of Chicago requesting 30c of their Answer to the Petition for Rehearing and Petition for Rehearing Enbanc filed by the Appellant on 6/10/02. [01-2167] [1517879-1] Answer to Petition for Enbanc Rehearing due 6/25/02 for City of Chicago. (hudk) |
| 6/13/02 | ORDER issued GRANTING motion to file amicus brief of the Fraternal Order of Police in support of Petition for Rehearing En Banc. [1515783-1] The clerk of this court is directed to file instanter the tendered copies of the brief of amicus curiae the Fraternal Order of Police. [1515783-1] WLS [01-2167] (amyd) |
| 6/13/02 | Filed 30c amicus brief in support of Rehearing En Banc by Amicus Curiae Fraternal Order Pol, per order. [01-2167] [0-0] (amyd) |
| | * * * * * |
| 7/2/02 | Filed 30c Answer of Appellee City of Chicago to Petition for Rehearing and Petition for Rehearing Enbanc. Dist. [01-2167] [1525038-1] (amyd) |
| | * * * * * |

| DATE | PROCEEDINGS |
|---|---|
| 7/16/02 | Filed Appellant TREA reply to Appellee City of Chicago Answer to Petition for Rehearing En Banc. Per Order. Dist. [01-2167] [1397663-1] (amyd) |
| 7/25/02 | ORDER: The opinion of this Court issued on 4/25/02 is corrected as follows: The following paragraph shall be inserted on the page eight of the opinion, after the first full paragraph. (See order for further details). The petition for rehearing is DENIED. [01-2167] [1515771-1] (hudk) |
| 7/25/02 | ORDER: Appellant TREA Petition for Rehearing and Petition for Rehearing Enbanc is DENIED. NOTE: This order also issued in the corrected opinion order of 7/25/02. [01-2167] [1515771-1] (hudk) |
| 7/29/02 | Filed motion by Appellant TREA to stay the mandate. [1532364-1] [01-2167] (amyd) |
| 7/29/02 | Filed Appellee City of Chicago response to Appellant TREA motion to stay the mandate. [1532664-1] [1532664-1] [01-2167] (amyd) |
| 7/30/02 | Filed Appellant TREA reply to Appellee City of Chicago response to Appellant's motion to stay the mandate. |



| DATE | PROCEEDINGS |
|---|---|
| 7/30/02 | Filed motion by Appellant TREA to subsitute reply to response motion for stay of mandate. [1533807-1] O&3c reply tendered. [0-0] [01-2167] (amyd) |
| 8/1/02 | ORDER re: 1) Motion for a stay of the mandate. 2) Appellee City of Chicago's response to motion to stay mandate. 3) Reply to response to motion to stay mandate. 4) Motion to substitute reply to response to motion for a stay of the mandate. #1 is GRANTED. The mandate is STAYED for 30 days. No extensions or further stays will be granted. [1532364-1] RMV [01-2167] Mandate is stayed until 9/3/02. (amyd) |
| 9/3/02 | Notice from TREA of the filing of a Petition for Writ of Certiorari. Notified by Leonard Schaitman at 202/514-3441. [01-2167] [1542724-1] (cint) |
| 9/4/02 | Notice from Leonard Schaitman of the filing of a Petition for Writ of Certiorari. Notified by mail. [01-2167] [1543848-1] (cint) |
| 9/9/02 | Filed notice from the Supreme Court of the filing of a Petition for Writ of Certiorari. Supreme Court Case No.: 02-322. (Note: Notice also received via telephone per Jeff Atkins from the U.S. Supreme Court on 9/3/02.) [01-2167] [1544921-1] (hard) |

| DATE | PROCEEDINGS |
|---|---|
| 11/18/02 | Filed order from the Supreme Court GRANTING the Petition for Writ of Certiorari. Supreme Court Case No.: 02-322. [01-2167] [1568051-1] (julr) |



UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
(CHICAGO)

No. 00-CV-3417

CITY OF CHICAGO, PLAINTIFF

*v.*

UNITED STATES DEPARTMENT OF TREASURY,
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,
DEFENDANT

**DOCKET ENTRIES**

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 6/7/00 | 1 | COMPLAINT - Civil cover sheet - Appearance(s) of Adam M. Kingsley, Matthew Michael Getter, Michael A. Forti as attorney(s) for plaintiff (4 originals and 4 copies summons(es) issued.) (Documents: 1-1 through 1-3) (Attachments) (rm) [Entry date 06/08/00] [1:00cv3417] |
| | * * * * * | |
| 7/7/00 | 2 | ANSWER by defendant AT&F to complaint [1-1] (eav) [Entry date 07/10/00] [1:00cv3417] |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| | | * * * * * |
| 11/9/00 | 20 | FIRST AMENDED COMPLAINT [1-1] by plaintiff (Attachments) (rm) [Entry date 11/13/00] [1:00cv3417] |
| 11/15/00 | 21 | MOTION by defendants AT&F and US Dept of Treasury for summary judgment (Attachments); (rm) [Entry date 11/16/00] [1:00cv3417] |
| 11/15/00 | 22 | MEMORANDUM by defendants AT&F, US Dept of Treasury in support of motion for summary judgment [21-1] (rm) [Entry date 11/16/00] [1:00cv3417] |
| 11/15/00 | 23 | STATEMENT of undisputed material facts in support of defendants' motion for summary judgment by AT&F, US Dept of Treasury (rm) [Entry date 11/16/00] [1:00cv3417] |
| 11/15/00 | 24 | MOTION by City of Chicago for summary judgment Memorandum in support; Notice (rm) [Entry date 11/17/00] [1:00cv 3417] |



| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 11/15/00 | 25 | STATEMENT of material facts as to which there is no genuine issue by Chgo, Cty of (Attachments) (rm) [Entry date 11/17/00] [1:00cv3417] |
| | | * * * * * |
| 11/20/00 | 28 | CORRECTED memorandum by City of Chicago in support of motion for summary judgment [24-1]. (mf) [Entry date 11/29/00] [1:00cv3417] |
| | | * * * * * |
| 12/8/00 | 33 | RESPONSE by defendants to plaintiff's statement of material facts as to which there is no genuine issue [25-1] (rm) [Entry date 12/11/00] [1:00cv 3417] |
| 12/8/00 | 34 | OPPOSITION by defendants to plaintiff's motion for summary judgment [21-1], [24-1] (Attachments) (rm) [Entry date 12/11/00] [1:00cv3417] |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 12/8/00 | 35 | MEMORANDUM IN RESPONSE by plaintiff to defendant's motion for summary judgment [21-1] (Attachments); Notice (rm) [Entry date 12/14/00] [1:00cv3417] |
| 12/8/00 | 36 | RESPONSE by Chgo, Cty of to statement of undisputed facts in support of defendant's motion for summary judgment [23-1] (rm) [Entry date 12/14/00] [1:00cv3417] |
| 12/15/00 | 37 | MEMORANDUM by plaintiff in opposition to defendant's motion to dismiss first amended complaint [18-1] (Attachment); Notice. (cs) [Entry date 12/18/00] [1:00cv3417] |
| 12/20/00 | 38 | REPLY memorandum by City of Chicago in support of its motion for summary judgment [24-1] (Attachments); Notice. (mf) [Entry date 12/26/00] [1:00cv3417] |
| 12/20/00 | 39 | REPLY memorandum by defendant in support of its motion for summary judgment [21-1] (Attachments). (mf) [Entry date 12/26/00] [1:00cv3417] |



| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| | | * * * * * |
| 12/27/00 | 41 | MOTION by defendants US Dept of Treasury, AT&F to dismiss for lack of subject matter jurisdiction; Memorandum in support; Notice (rm) [Entry date 01/19/01] [1:00cv3417] |
| 12/27/00 | 42 | ANSWER by defendant AT&F to first amended complaint [20-1] (rm) [Entry date 01/19/01] [1:00cv3417] |
| | | * * * * * |
| 1/18/01 | 44 | MINUTE ORDER of 1/18/01 by Hon. George W. Lindberg: The court finds that a hearing is required to resolve the issues presented in the cross-motions for summary judgment. The court will hear testimohy as to why the withheld information would fall within FOIA exemption 6 and 7, if the documents requested were redacted (for example by using unique identifier codes in the place of individuals' names) and the feasibility |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| | | of such redaction. The court will hear testimony on these issues on 1/24/01 at 10:30 a.m. Notices mailed by judge's staff (rm) [Entry date 01/19/01] [1:00cv3417] |
| 1/24/01 | — | SCHEDULE set on 1/24/01 by Hon. George W. Lindberg: Hearing held and continued to January 31, 2001 at 10:30a.m. No notice (sab) [Entry date 01/24/01] [1:00cv3417] |
| 2/7/01 | 45 | POST-HEARING MEMORANDUM by defendants US Dept of Treasury, AT&F in support motion for summary judgment [21-1] (Attachments) (rm) [Entry date 02/08/01] [1:00cv3417] |
| 2/14/01 | 46 | MEMORANDUM by plaintiff in opposition to defendant's motion to dismiss count II [41-1] (Attachments); Notice. (mw) [Entry date 02/16/01] [Edit date 02/16/01] [1:00cv3417] |



| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 2/14/01 | 47 | POST-HEARING memorandum by plaintiff in support of its motion for summary judgment [24-1] (Attachments); Notice (ar) [Entry date 02/16/01] [1:00cv3417] |
| | | * * * * * |
| 2/22/01 | 49 | REPLY by defendants in support of defendant's motion to dismiss for lack of subject matter jurisdiction [41-1] (ar) [Entry date 02/23/01] [1:00cv3417] |
| 3/5/01 | 50 | TRANSCRIPT of proceedings for the following date(s): 8/23/00 before Honorable George W. Lindberg (rm) [Entry date 03/06/01] [1:00cv 3417] |
| | | * * * * * |
| 3/6/01 | 52 | MINUTE ORDER of 3/6/01 by Hon. George W. Lindberg: Defendant's motion to dismiss Count II for lack of subject matter jurisdiction is granted |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| | | [41-1]. (See reverse of minute order.) Mailed notice (rm) [Entry date 03/07/01] [1:00cv 3417] |
| 3/6/01 | 53 | MEMORANDUM, OPINION, AND ORDER (rm) [Entry date 03/08/01] [1:00cv3417] |
| 3/7/01 | 54 | MINUTE ORDER of 3/7/01 by Hon. George W. Lindberg: Plaintiff's motion for summary judgment is granted [24-1]. Defendant's motion for summary judgment is denied [21-1]. Enter memorandum opinin and order. terminating case Mailed notice (rm) [Entry date 03/08/01] [1:00cv3417] |
| 3/7/01 | 55 | ENTERED JUDGMENT (rm) [Entry date 03/08/01] [1:00cv 3417] |
| 3/13/01 | 59 | MOTION by plaintiff Chgo, Cty of to amend judgment order (Attachments); Notice (rm) [Entry date 03/23/01] |

* * * * *



| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 3/20/01 | 58 | MEMORANDUM by defendants in opposition to plaintiff's motion to amend judgment with defendant's motion (rm) [Entry date 03/21/01] [1:00cv3417] |
| 3/20/01 | 58 | MOTION by defendants to stay pending appeal with memorandum in opposition (rm) [Entry date 03/21/01] [1:00cv 3417] |

* * * * *

| | | |
|---|---|---|
| 3/21/01 | 61 | MINUTE ORDER of 3/21/01 by Hon. George W. Lindberg : For the reasons stated in open court, defendant's motion for a stay pending appeal is granted [58-1]. FRCP 62(a)(, (d). Because defendant is an agency of the United States, "no bond, obligation, or other security" is required from defendant. FRCP 62(e). Mailed notice (rm) [Entry date 03/23/01] [1:00cv3417] |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 3/21/01 | 62 | MINUTE ORDER of 3/21/01 by Hon. George W. Lindberg: Plaintiff's motion to amend judgment order [59-1] is granted in part and denied in part. The portion of the motion requesting that the judgment require defendant to produce the requested information for the period from 1/1/92, through the date defendant produces the information is granted. The portion of the motion requesting that the judgment be amended to require defendant to produce all information set forth in the 8/25/00 Bill of Particulars is granted insofar as it concerns information contained in submodules of databases referenced in plaintiff's 3/3/00 FOIA request and denias as it concerns information contained in any database not referenced in plaintiff's 3/3/00 FOIA request. (See reverse of minute order.) Mailed notice (rm) [Entry date 03/23/01] [1:00cv3417] |



| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| | | Hon. George W. Lindberg: Plaintiff's motion to amend judgment order is granted in part and denied in part. Defendants' motion to stay is granted. Defendant's oral motion for leave to file petition for attorneys fees within 90 days is granted. No notice (rm) [Entry date 03/27/01] [1:00cv3417] |
| | | * * * * * |
| 5/4/01 | 66 | NOTICE OF APPEAL by defendant AT&F from motion minute order [63-1], from judgment entered [55-1], from Scheduling order terminating case [54-1], from motion minute order [54-2] (Fee Waived) (ch) [Entry date 05/07/01] [1:00cv 3417] |
| | | * * * * * |
| 8/13/01 | 76 | TRANSCRIPT of proceedings for the following date(s): 1/24/01, 1/31/01, 3/21/01, 7/11/01 appeal [66-1] before Honorable George W. Lindberg (76-1 through 76-4) (rm) [Entry date 08/14/01] [1:00cv3417] |
| | | * * * * * |

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

---

Case No. 00C3417
Judge Lindberg
Magistrate Judge Denlow

CITY OF CHICAGO, PLAINTIFF

*v.*

UNITED STATES DEPARTMENT OF
THE TREASURY, BUREAU OF ALCOHOL,
TOBACCO AND FIREARMS, DEFENDANT

---

**DECLARATION OF DAVID L. BENTON,**
**ASSISTANT DIRECTOR, FIELD OPERATIONS**
**BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**

1. I, David L. Benton, am the Assistant Director for Field Operations in the Bureau of Alcohol, Tobacco and Firearms ("ATF"), U.S. Department of the Treasury. I have served in this position since August 2000. As Assistant Director for Field Operations, I am the principal assistant to the Director in policy formulation and implementation of ATF's law enforcement efforts involving ATF special agents and inspectors assigned to ATF's twenty-three field divisions nationwide. I either personally review or get briefed daily on the criminal investigations and high-level industry-related issues pertaining to, among other things, criminal firearms enforcement issues.



2. The statements made in this declaration are based on knowledge that I have acquired in the performance of my official duties. I have read and am familiar with the Complaint and other papers filed in this case.

3. The purpose of this declaration is to provide information about the Firearms Tracing System ("FTS") and to explain the bases for ATF's decision to provide Plaintiff most, but not all, of the data requested from the FTS under the Freedom of Information Act ("FOIA"). As explained herein, disclosure of the entire FTS could reasonably be expected to interfere with law enforcement proceedings and privacy interests.

4. I have been a Special Agent with ATF since 1975. During my ATF career, I have served in various managerial and supervisory positions including Resident Agent in Charge in Wichita, Kansas, Assistant Special Agent in Charge in Kansas City, Missouri, and Special Agent in Charge in Chicago, Illinois. I have also held several positions in ATF headquarters, most recently serving two years as Assistant Director for Liaison and Public Information.

5. As Assistant Director for Liaison and Public Information, I was responsible for all disclosures made by ATF under the FOIA and served as the deciding official on numerous FOIA requests for data from the FTS database.

6. As a Special Agent and supervisor, I have had extensive experience in the area of firearms tracing throughout my career. I initiated numer-

ous firearms traces as a criminal investigator. This process involved examining voluminous firearms records of Federal Firearms Licensees ("FFLs").

7. I have also supervised a wide range of firearms enforcement activities including investigations of firearms traffickers and violent criminal organizations. A significant investigative tool in these investigations has been the tracing of firearms, which assists the investigators in locating the "sources" of firearms. Firearms tracing is a critical element of ATF's law enforcement mission, as it provides valuable investigative and strategic information about illegal sources of firearms. For example, trace information can reveal that a purchaser is repeatedly buying firearms from an FFL or that guns recovered in crimes originate frequently from a particular FFL.

8. I served as Deputy Associate Director for Law Enforcement from October 1993 to November 1995. In this position, I supervised major firearms tracing/trafficking projects in Detroit, Los Angeles, Baltimore, and Chicago. These projects served as the impetus for the formulation of ATF's National Tracing Center's ("NTC") Crime Gun Analysis Branch in West Virginia.

ATF's Law Enforcement Mission

9. The Secretary of the Treasury has statutory responsibility to enforce Federal firearms laws. The Secretary delegated these responsibilities to ATF by Treasury Order No. 120-01 (June 1972)



(formerly T.D. Order No. 221, 37 Fed. Reg. 11,696).

10. ATF is a criminal and regulatory enforcement agency within the Department of the Treasury and is responsible for, among other things, enforcing Federal firearms laws including the Gun Control Act of 1968 ("GCA"), 18 U.S.C. §§ 921-930 (2000) (originally enacted as Act of Oct. 22, 1968, Pub. L. No. 90-618, § 1, 82 Stat. 1213). The GCA established a licensing system for persons engaged in manufacturing, importing, dealing, and collecting firearms (*i.e.*, FFLs). ATF enforces the licensing provisions of the GCA, which, among other things, regulates the interstate movement of firearms.

11. The GCA requires FFLs to keep records of firearms acquisition and disposition, maintain that information at their business premises, and make these records available to ATF for search and inspection under certain specified circumstances. The GCA requires FFLs to respond within 24 hours after receiving a request for records as may be required to determine the disposition of one or more firearms "*in the course of a bona fide criminal investigation.*" 18 U.S.C. § 923(g)(7) (emphasis added). NTC personnel enter the information provided pursuant to a trace request in the Trace Database Sub-Module of the FTS, which collects and tracks data on traces of firearms suspected of being involved in a crime. Utilizing these GCA records, ATF provides firearms tracing services in support of criminal investigations to Federal, State, local, and international law enforcement agencies.

12. The GCA also requires FFLs to prepare a report of a multiple sale whenever they sell or otherwise dispose of two or more pistols or revolvers (handguns) to an unlicensed person within any five consecutive business days. *See* 18 U.S.C. § 923(g)(3)(A). These multiple sales reports must be forwarded to the NTC, where they are entered into the Multiple Sales Database Sub-Module, as well as to the law enforcement agency for the jurisdiction in which the sale or disposition took place not later than the close of business on the day that the transaction occurs. Multiple sales may indicate illegal trafficking in firearms, and the multiple sales reports are often the starting points for investigations of illegal gun trafficking.

Firearms Tracing

13. To carry out its firearms tracing functions, ATF maintains the FTS, which is a law enforcement information database, at the NTC. The NTC provides ATF field agents and other law enforcement agencies with "trace data" as quickly as possible as well as investigative leads obtained from the traced firearm.

14. "Tracing" a firearm is the systematic tracking of the history of a firearm from the manufacturer or importer through wholesalers to the retail FFL(s) and ultimately to the first retail purchaser. A firearm trace begins when the NTC receives a request from the Federal, State, local, or international law enforcement agency that recovers a firearm. The firearm typically is recovered at the scene of the crime or from the



possession of a suspect, felon, or other prohibited person.

15. To conduct a trace, the requesting agency must provide the NTC with the manufacturer, weapon type, caliber, and the serial number of the firearm recovered in connection with a crime. In a typical case, after receiving a trace request, NTC personnel contact the manufacturer or importer to determine when and to whom the firearm in question was sold. When the NTC contacts an FFL requesting information, ATF informs the FFL only about the firearm involved in the trace; the FFL is not informed of any circumstances relating to the crime or which law enforcement agency recovered the firearm.

16. In most instances, the manufacturer or importer has sold the firearm to an FFL wholesaler. NTC personnel then contact the wholesaler to determine when and to whom the firearm in question was sold, usually to an FFL retailer. The tracing process continues as long as records allow and is considered successful when ATF can identify the first retail purchaser (a non-FFL) from an FFL. ATF's tracing process generally stops at the first retail purchase because any subsequent disposition of the firearm by a non-FFL is not subject to GCA record-keeping or reporting requirements.

17. The "trace data" are maintained in the Trace Database Sub-Module of the FTS and include the 8-digit identification number of the FFLs involved in the sale or transfer of the firearm along with any information regarding the retail purchaser of the firearm. Law enforcement

agencies, including ATF, may use the "trace data" to link a suspect to a firearm-related criminal investigation, to identify any potential firearms traffickers, and to detect patterns in the sources and kinds of firearms that are used in a crime.

18. The NTC forwards the firearms tracing results directly to the requesting law enforcement agency. Approximately one-half of the requests in any given year are successfully traced to the retail purchaser of the firearm.

Disclosure Concerns Under the FOIA

19. Requests from over 17,000 law enforcement agencies other than ATF in the United States and abroad comprise the bulk of firearms traces conducted by ATF. The remainder of the traces are conducted pursuant to ATF investigations. As of November 9, 2000, the FTS contains the results of 1,261,593 traces of which 920,655 originated from state and local law enforcement. In fiscal year 1999, ATF processed approximately 209,000 requests for firearm traces, the vast majority of which came from other law enforcement agencies.

20. Federal, State, local, and international law enforcement agencies are not required to advise ATF of the status of their investigations. The NTC provides the service of tracing firearms but does not track the status of these investigations. Thus, unless ATF's agents are involved directly in a case, ATF is not informed as to whether the requesting agency has an open criminal case that could be jeopardized by disclosing information



pertaining to the firearm trace conducted by ATF. Nor is ATF informed when the requesting agency's criminal investigation has been concluded. However, there is no doubt that many of the over 1.2 million trace results in the FTS relate to open investigations. For this reason, ATF must be extremely cautious in disclosing law enforcement data from the FTS to members of the public under the FOIA.

21. Included among the Federal agencies that submit trace requests are United States government intelligence agencies that submit requests regarding the movement of arms abroad. These requests are very sensitive and are handled in strictest confidence. Because firearms tracing is voluntary and depends in significant part on the requesting agency's expectation of ATF nondisclosure policy to maintain confidentiality, it is quite apparent that the release of "trace data" could be expected not only to compromise investigative and intelligence operations, but also to undermine the confidence in the NTC and the entire tracing process.

22. Because the data are not "reasonably segregable" in an open investigation-specific manner, ATF FOIA policy with respect to the FTS data at issue is to provide as much data as possible under the FOIA, but to withhold those data that would, when combined with information that ATF makes available to the public under the FOIA, reveal the results of ATF's trace before the law enforcement agency has had a reasonable opportunity to solve the crime that may be related to the traced firearm. Thus, through its

balanced disclosure policy, ATF aims to prevent parties other than the jurisdiction that submitted the trace request to "connect the dots" or have all of the information necessary to attempt to trace firearms recovered in a crime while the investigation may be open.

23. The following example illustrates the importance of ATF's policy. ATF successfully interdicted an international firearms trafficking conspiracy in which several individuals were utilizing several different FFLs in South Florida to smuggle firearms into a Middle Eastern country. After obtaining the cooperation of two defendants, ATF discovered that this smuggling ring was also part of a much larger firearms trafficking conspiracy being investigated in Ohio. If parties other than the jurisdiction that submitted the trace requests to ATF had unredacted trace information, as sought by Plaintiff in this case, then they could have contacted the FFLs or purchasers in question in an effort to obtain information about the purchaser(s) of the traced firearms, who were being investigated. Either of these results could have compromised a very sensitive international investigation that was later joined by Interpol.

24. Two recent ATF initiatives further demonstrate the importance of crime gun tracing with respect to illegal trafficking. Online LEAD is a computer-based software program that performs automated analysis by linking the identical information or data from numerous records such as a firearm trace and a multiple sale of firearms. For example, when the name of the purchaser is



linked to multiple purchases of firearms recorded in multiple sales records, this could indicate that firearms being purchased in multiple sales are being subsequently diverted for illegal use. The linking of the same purchaser to several firearm traces would also be an indicator of illegal conduct, as would multiple sales of non-collectable firearms or firearms with a high incidence of use in crime.

25. Online LEAD provides investigative leads to ATF Special Agents and police officers working with ATF regarding illegal firearm traffickers by analysis of FTS data. Online LEAD provides ATF agents on ATF computers with a daily extract from the FTS that can be used to find repeat sellers and buyers of crime guns based on some of the data withheld under the FOIA such as the identity of the firearm's possessor and his associates. Armed with this information from the FTS, ATF agents at field offices throughout the country can work to identify possible illegal firearms trafficking, independent of any particular trace request.

26. Similarly, the Youth Crime Gun Interdiction Initiative ("YCGII"), which was developed in response to increased firearms crime involving America's youth, seeks to determine the illegal sources of guns for youths by analyzing trace data to detect patterns in the local supply of crime guns. Participating law enforcement agencies in the initiative committed to having all crime guns recovered in their jurisdictions traced through the NTC. YCGII is ATF's primary investigative technique to identify the

sources of illegal firearms trafficking to juveniles.

27. Assume, for example, that the Baltimore Board of Education finds a significant number of firearms on school property and requests that they be traced. ATF agents in pursuit of a YGCII investigation develop a confidential informant who identifies the source of the firearms as a particular FFL. As a result, ATF requests that the FFL not be contacted by the NTC as part of a firearm trace. Investigation reveals that the FFL is paying people off the street to fill out the GCA-required firearms acquisition and disposition records. The FFL then delivers the guns to Baltimore for sale. If the FFL were able to determine from publicly available ATF data that his weapons are being traced prior to the disclosure of such information per ATF policy, then he could avoid detection by altering or moving illegal operations prior to completion of the investigation and, thus, contravene ATF's goal of protecting the integrity of law enforcement investigations. ATF can identify an FFL involved in criminal activity through the use of multiple sales records without the need to alert the FFL as part of a firearm trace.

28. Because of these concerns, it is a standard operational security practice in the law enforcement community that shared investigative information concerning a recent crime should not be disclosed without the specific authorization of the original investigating agency where disclosure could compromise an investigation or reveal the identities of law enforcement personnel or third



parties. The premature release of all of the information sufficient to trace firearms relating to an open investigation may well compromise a criminal case in that evidence may be tampered with or the safety of investigators, informants and witnesses may be jeopardized if a potential defendant discovers their involvement in an investigation. With over 200,000 traces per year for approximately 17,000 law enforcement agencies in the United States and abroad, it would be impossible for ATF to identify the open cases and the information whose disclosure would compromise a criminal investigation and to segregate the open investigations from the closed investigations. This task would involve maintaining regular contact with each requesting agency to determine this information, which ATF does not need for enforcement purposes.

29. ATF's concerns regarding the release of the information sought by Plaintiff are shared by the Fraternal Order of Police ("FOP"), which has more than 290,000 members and the Law Enforcement Steering Committee ("LESC"), an entity representing over 500,000 law enforcement officers and police practitioners in such organizations as the National Association of Police Organizations and the Major Cities Chiefs. The FOP's and LESC's member agencies have long utilized ATF's firearms tracing, and their participation in ATF's firearms tracing efforts is based on the trust and understanding that ATF will not disclose the information in question to anyone other than the requesting agency if there

is any chance of compromising an investigation or disclosing the names of enforcement personnel or third parties. The FOP and LESC have expressed particular concern to ATF about the premature disclosure of data that would link a specific firearm being traced to the particular FFLs, the individual purchaser, the possessor and any associates, and the location where the crime occurred because it could jeopardize their members' cases and the continued value of the NTC to them. Recent letters from the FOP and LESC to ATF are attached hereto as Attachment 1.

Data Withheld In Response to Plaintiff's FOIA Requests

30. As described in paragraph 11 of the Declaration of ATF Disclosure Division Chief Dorothy A. Chambers, the complaint that is the subject of this litigation concerns law enforcement data from two sub-modules—the Trace Database Sub-Module and the Multiple Sales Database Sub-Module—of the FTS. Pursuant to the FOIA, ATF discloses all but a small portion of the data contained in these two sub-modules. The small amount of withheld data is justified pursuant to FOIA Exemptions 6, 7(A), and 7(C), and is reflected in the chart concerning the data at issue in Attachment 2 to Ms. Chambers's Declaration.

31. Exemption 7(A) entitles ATF to withhold as exempt from public disclosure information that is "compiled for law enforcement purposes" to the extent that "the production of such law enforce-



ment records or information . . . could reasonably be expected to interfere with enforcement proceedings. . . ." 5 U.S.C. § 522(b)(7)(A). Exemption 7(C) authorizes the withholding of law enforcement records that "could reasonably be expected to constitute an unwarranted invasion of personal privacy. . . ." *Id.* § 552(b)(7)(C). Under Exemption 6, ATF may also withhold information about individuals in "personnel and medical and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 552(b)(6). ATF must strike a reasonable balance between open disclosure and the protection of legitimate law enforcement and privacy interests.

32. The Trace Database Sub-Module contains approximately 300 data elements. The data elements in the Trace Database Sub-Module can be grouped into the following six general categories: (i) information about the law enforcement agency requesting the trace, such as the agency's name, address, case number, and investigative notes provided by the agency; (ii) information provided by the requesting agency regarding its recovery of the firearm, such as the date and location where the traced firearm was taken into custody by the requesting agency; (iii) information about purchasers of the traced firearm; (iv) information about possessors of the traced firearm and any associates (*i.e.*, persons with the possessor of the firearm when the firearm comes into police custody), such as their names and addresses, driver's license informa-

tion and social security numbers, and any related vehicle information; (v) information identifying each FFL that has sold the traced firearm; and (vi) information about the traced firearm such as the manufacturer, importer, model, weapon type, caliber and serial number.

33. The Multiple Sales Database Sub-Module contains a subset of data elements that are also in the Trace Database Sub-Module. The data elements include purchaser name and identifying information (*e.g.*, address and date of birth), weapons information (*e.g.*, manufacturer, weapon type, serial number, and caliber), and FFL identifying information, (*e.g.*, name and address). ATF uses the Multiple Sales Database Sub-Module to develop leads regarding illegal firearm trafficking. That is, ATF analyzes multiple sales data to develop investigative leads for those persons who engage in business as unlicensed firearms dealers or who transport or sell firearms illegally in interstate commerce.

ATF's Withholdings Under FOIA Exemption 7(A) For Data From the Trace Database Sub-Module

34. The Trace Database Sub-Module data at issue in this case (*i.e.*, the data identified in Section III of Plaintiff's Bill of Particulars) can be organized into the following six categories: Requester Information Data, Weapon Data, Recovery Location Data, Possessor and Associates Data, FFL Identification Data, and Purchaser Identification Data.

35. ATF withholds all data in the Trace Database Sub-Module for a period of one year under



Exemption 7(A) because firearms traces may take many weeks or months to complete, and the delay allows law enforcement personnel sufficient time to complete the trace process of identifying purchasers and possessors of the firearm after it leaves the FFL's distribution chain. The one-year withholding period for all trace data also protects against the possibility of interference with a recently-opened investigation. After one year, ATF releases data that the agency determines is not likely to cause such interference.

36. For example, a law enforcement investigation could be compromised if the news media or anyone other than the investigating law enforcement agency prematurely obtained the trace data. They could then attempt to trace the firearm(s) themselves and contact potential defendants and witnesses to the crime, thus compromising the investigation by getting to the suspect or witnesses before the law enforcement agents do. A situation similar to this happened after the Columbine High School tragedy when the news media interviewed persons involved in selling the firearms used in the crime before law enforcement had a chance to interview them. Although in this example, the information was disclosed by local law enforcement, it illustrates how premature disclosure of trace information can interfere with law enforcement investigations.

37. ATF has produced to Plaintiff all existing requested data from the Trace Database Sub-

Module through December 31, 1998,[1] with the exception of data from nine of the 300-plus data elements in this Sub-Module, which are withheld for five years under Exemption 7(A), and individuals' name and address data, which are withheld indefinitely for privacy reasons under Exemptions 6 and 7(C).

38. ATF withholds data from the nine data elements[2] for five years under Exemption 7(A) because their release, combined with the other FTS data that ATF currently releases, would enable members of the general public to trace firearms used in crimes and interfere with law enforcement investigations. ATF is willing to release this information after five years because, in ATF's experience, trace information tends to become "stale" and less important to law enforcement agencies after five years. This five-year term is also consistent with the statute of limitations for violations of the GCA, 18 U.S.C. § 3282, which sufficiently reduces the law enforcement interest in the data after that time to tip the balance under the FOIA in favor of disclosure. Thus, ATF has determined that protection of the data for five years strikes the

[1] Data through December 31, 1999 will be released to the public as of January 1, 2001.

[2] Requester Information Data (ORI Code, Agency Name, Agency City, and Agency Zip Code); Weapon Data (Serial Number and Importer Name); the FFL Identification Data (FFL Number and Invalid Dealer Number), and Purchaser Identification Data (Purchase Date only; the other data elements in this category are withheld indefinitely under Exemptions 6 and 7(C), as explained below).



most appropriate balance between public disclosure of as much information as possible and the protection of law enforcement efforts. The application of Exemption 7(A) for each category of data withheld is explained below.

Requester Information Data

39. ATF withholds the Requester Information Data[3] under Exemption 7(A) because premature disclosure of this information would reveal which law enforcement agency has requested a firearms trace. The "requester" refers to the law enforcement agency that has requested tracing assistance from ATF pursuant to the GCA. When combined with other data contained in the Trace Database Sub-Module, public disclosure of the Requester Information Data could reveal prematurely the existence of a law enforcement investigation by the investigating agency. Premature public disclosure of the ORI Code, which, like the Agency Name, identifies a non-ATF law enforcement agency that requested the trace, would inform the public that such agency was conducting an investigation into a crime involving a firearm already publicly disclosed under the FOIA by make, model, and serial number. For example, assume a local police officer is working undercover purchasing firearms from an associate of an FFL in Ohio. He is purchasing these legal firearms from the FFL with the understanding that he will be selling the

[3] Requester Information Data at issue consists of four data elements: ORI Code, Agency Name, Agency City, and Agency Zip Code. See Pl.'s Bill Req. 1-3.

firearms illegally on the streets of Detroit. If the FFL knows that his local police department is tracing the firearms, the investigation could be compromised and the police officer's safety could be in jeopardy because the criminals would make every effort to identify the law enforcement agency and officers involved in the investigation. Withholding the ORI Code (and the rest of the Requester Information Data) allows the investigating agency the time to utilize the information provided on the trace report (to conduct interviews of the FFL, suspects, develop additional investigative leads, etc.) without fear of having its law enforcement investigation jeopardized by an outside source. Again, the jeopardy to law enforcement derives from the disclosure of the investigating agency in the context of the information already made public under the FOIA by ATF. For similar reasons, ATF withholds the Agency City and Zip Code for five years, as it would be fairly easy for a member of the public to discern the requesting agency given this level of specificity, especially in lightly populated jurisdictions.

Weapon Data

40. ATF withholds the Weapon Data[4] under Exemption 7(A) because these data can tip off non-law enforcement personnel as to important aspects of an active investigation concerning a firearm used in a crime.

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[4] Weapon Data at issue consists of two data elements: Serial Number and Importer Name. See Pl.'s Bill Req. 9-10.



41. The serial number of traced firearms is withheld for one year for the reasons described in ¶ 35. The only exception is that ATF withholds serial numbers of traced firearms for five years if the firearm is involved in a multiple sale. Only 1.3% of the completed traces in the Trace Database Sub-Module concern a firearm purchased as part of a multiple sale.

42. The serial number of the firearm is one of the most critical pieces of information relative to firearms traces. Greater protection is necessary in the context of multiple sales due to ATF's disclosure of the retail FFL's identity as well as the serial numbers of handguns involved in multiple sales in the Multiple Sales Database Sub-Module under the FOIA. If the serial numbers of firearms included in both the Trace Database Sub-Module and the Multiple Sales Database Sub-Module were released prior to five years after the date of the trace, then non-law enforcement personnel would have enough information to identify FFLs involved in a firearms trace before the expiration of the five-year period established by ATF. Prior to five years, ATF releases from the Trace Database Sub-Module only three digits of the eight-digit number that ATF uses to identify an FFL. *See infra* ¶ 49. However, all eight digits are released from the Multiple Sales Database Sub-Module, albeit without connection to any particular trace investigation. Thus, parties other than those directly involved in the investigation at issue could link the firearm from a trace to a multiple sale record and identify the FFL that made the

final retail sale. Specifically, non-law enforcement personnel would have both the serial numbers of traced firearms and the FFL's eight-digit number from whom the traced firearms were purchased.

43. In addition, premature disclosure of the serial numbers, in conjunction with other released data, would make it more difficult for law enforcement agents to discern firearms trafficking patterns because traffickers could ascertain whether their purchases are being examined by law enforcement personnel. That is, traffickers could shift their purchase patterns and firearms sources to avoid detection. For example, a multiple purchaser of firearms could cease making multiple purchases, thereby making it more difficult to identify the pattern of a firearms trafficker. This can be seen in States that have enacted laws allowing only one handgun purchase per month. Trends indicate that ten straw purchasers now purchase one firearm each whereas one straw purchaser used to purchase ten firearms in a single transaction.

44. The Importer Name is released after five years based on the same rationale. If ATF were to disclose the importer name, members of the public would know which FFL imported the firearm used in a crime. Given that information, the importer could be approached by private investigators, members of the media, possible suspects, witnesses, or others whose actions could interfere with an active law enforcement investigation. Again, the jeopardy to law enforcement investigations results not from



release of this specific data, but rather the release of this data in conjunction with all of the other data released by ATF. Such interference could lead to alerting suspects prematurely or endangering witnesses and informants. Moreover, an importer can also make direct retail sales of firearms. As such, they can be the closest link to the first retail purchaser, thus raising the potential to compromise an investigation if they are prematurely contacted by the public.

Recovery Location Data

45. The Recovery Location Data[5] are withheld under Exemption 7(A) because they reveal the physical location of a firearm involved in a crime. Recovery location is the street address or vehicle identity where the traced firearm was found by law enforcement or when there is no address (for example, where a criminal throws the firearm into a river), the recovery location is the nearest street address. As such, that location may be part of the crime scene or may concern the home or business address of the victim, suspect, witness, or an acquaintance thereof. Public disclosure of this information could lead to members of the public visiting the premises, thus potentially altering or tampering with physical evidence, or contacting individuals who work or live at the recovery location, which

[5] Recovery Location Data at issue consists of seven data elements: Route Number, Apartment Number, Street Number, Street Direction, Street Name, Street Suffix, and Zip Code. See Pl.'s Bill Req. 16-22.

could result in, among other things, notice to the suspect of an investigation, the intimidation of witnesses, disclosure by those individuals of information that could assist the perpetrator's flight, or the lack of cooperation with the investigating authorities. For example, in a case where someone kills four people at a local fast food restaurant and dumps the gun down the sewer on the next block, disclosure of the recovery location could tip the suspect that the police have found the weapon, and thus could be closing in on him prior to the time that the police are ready to arrest him. The place where a criminal attempts to hide the crime gun is often known only to the potential defendant. Disclosure of law enforcement's recovery of the firearm with the exact serial number from the very location where the perpetrator left it would clearly tip off the criminal that law enforcement is on his trail.

46. ATF does not claim Exemption 7(A) for the Recovery Location Data after five years. However, ATF continues to withhold all of these data to protect the privacy interests of the individuals who live or work on the premises, as discussed further below.

Possessor and Associates Data

47. The Possessor and Associates Data[6] are withheld under Exemption 7(A) because they reveal the

[6] Possessor and Associates Data at issue consists of 11 data elements: Last Name, Middle Name, First Name, Name Suffix, Route Number, Apartment Number, Street Number, Street Direction, Street Name, Street Suffix, and Zip Code. See Pl.'s Bill Req. 23-33.



names and addresses of individuals who possessed a firearm or were directly associated with the possessor when the firearm involved in a crime was recovered. These people may be witnesses, suspects, or acquaintances of suspects, and thus, their public identification with a crime may cause them to flee the jurisdiction, inform the perpetrator of the investigation and the trace, or manufacture an alibi for any possible involvement with the crime. To the extent that an associate became a witness or informant, the routine public disclosure of his name and address could put him in physical danger or, at minimum, discourage witness or informant cooperation in future investigations.

48. ATF does not claim Exemption 7(A) for the Possessor and Associates Data after five years but continues to withhold all of these data to protect the privacy interests of the individuals whose names and addresses are contained in these data elements, as discussed further below.

FFL Identification Data

49. The FFL Identification Data[7] are withheld for five years under Exemption 7(A) because they reveal the FFL(s) who sold the firearm involved in a crime. Within five years of a trace request, ATF releases the first three digits in the FFL number, which identify the State and region of the FFL(s) involved in a trace. Disclosure of the entire FFL Numbers prior to that time would

[7] FFL Identification Data at issue consists of three data elements: FFL Number and Invalid Dealer Number. See Pl.'s Bill Req. 34-35.

create a significant risk that the disclosure of this information could prematurely reveal the existence of an investigation, which could compromise that investigation. As noted elsewhere herein, providing the specific identity of the FFL in conjunction with other data released by ATF, such as serial numbers of traced firearms, would allow third parties not involved in the specific law enforcement investigation in question to "connect the dots" and potentially compromise such an investigation, especially where the FFL is suspected of wrongdoing (*e.g.*, illegal trafficking).

50. For example, an FFL owner and FFL employees may be witnesses, suspects, or accomplices to the crime committed with that firearm. If ATF were to disclose the entire eight-digit FFL number, members of the public would know which FFL sold the firearm in question, which is already identified to the public by the serial number. Given that information, the FFL owner and employees could be approached by private investigators, members of the media, possible suspects, witnesses, or others whose actions could interfere intentionally or unintentionally with an active law enforcement investigation by, among other things, tampering with these individuals' potential testimony.

51. Another example is an ATF case where firearms were being purchased in Georgia and transported to New York. Through firearm tracing over a period of time, ATF agents in New York were able to identify an FFL who was selling guns in Georgia that were being recovered in



New York. ATF was able to enlist the assistance of the retail FFL in Georgia and set up surveillance from the time of sale through the trafficking of the firearms into New York. If the identity of the FFL who was illegally selling the firearms had been released prematurely, that is, before ATF secured his cooperation, in connection with the disclosure of the serial numbers of the firearms in question and other released information, the investigation could have been compromised. That is, the FFL would have been on notice that the specific firearms he knows were illegally diverted have been recovered by law enforcement in another State. Obviously, the FFL would begin taking actions to thwart the ongoing investigation by refusing to sell to the violators and causing the traffickers to go elsewhere or warning the violators prior to contact by the ATF agents.[8] Until the investigation was completed, GCA violations could not be established conclusively. In this case, surveillance was critical to proving GCA violations. Cases like this can take two years or longer to develop as firearms are recovered that indicate a pattern of possible violations. The follow-up investigation can also take several years to complete.

52. In another ATF case, a five-month undercover investigation of a corrupt FFL resulted in the execution of a Federal search warrant. After the execution of the search warrant, the FFL agreed to cooperate and functioned as a "storefront"

[8] In such cases, ATF would not contact the target FFL as part of the trace.

operation for firearms traffickers for an additional nine months. Premature release of the FFL information and additional information already disclosed by ATF under the FOIA would be sufficient to link the traced firearms to the FFL. This knowledge could be used to compromise the investigation and potentially endanger a cooperating witness and law enforcement personnel. Violators could monitor the trace information to see if law enforcement is investigating any of the trafficked firearms. If the stolen firearms were sold to an FFL acting as a "fence" and the firearms were traced, then the violator could determine if the firearms had gained the attention of a law enforcement agency.

53. The Invalid Dealer Number is a number assigned to Federal, State, local, military, and foreign governments who are not required under the GCA to obtain a Federal firearms license to sell firearms. When a gun that has been purchased by one of these agencies is subsequently recovered in a crime (whether the gun was stolen, lost, or legally traded-in to obtain revenue for newer weapons) the agency information is entered into the Trace Database Sub-Module under the heading "invalid FFL." These data are protected under Exemption 7(A) to allow the investigating agency to determine the value of the information without concern that their investigation would be jeopardized by an outside source. For example, potential suspects could be members of the "invalid FFL" who are illegally selling the firearms in question.



Purchaser Identification Data

54. The Purchaser Identification Data[9] are withheld under Exemption 7(A) because they reveal the names and addresses of individuals who purchased a firearm involved in a crime. Like a possessor or associate, a purchaser may be a suspect, accomplice, witness to the crime, or an acquaintance thereof; thus, the purchaser's public identification with a crime may cause him to flee the jurisdiction, inform the perpetrator of the investigation and the trace, or manufacture an alibi for any possible involvement with the crime. Any of these outcomes could frustrate the criminal investigation.[10]

55. The purchase date of the firearm is withheld because, in combination with the data released under the FOIA such as make, model, and serial number of the traced firearm(s), the date could easily identify the FFL who sold a firearm. The FFL may be a witness or a subject of an investigation on the sale, transfer, or use of the firearm in a crime. A corrupt FFL would have

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[9] Purchaser Identification Data at issue consists of 12 data elements: Purchase Date, Last Name, Middle Name, First Name, Name Suffix, Route Number, Apartment Number, Street Number, Street Direction, Street Name, Street Suffix, and Zip Code. See Pl.'s Bill Req. 39-50.

[10] As a matter of policy, ATF deletes the name data elements (i.e., Last Name, Middle Name, First Name, and Name Suffix) after eight years. Thus, the Trace Database Sub-Module contains no name data for purchasers of firearms involved in a trace before January 1, 1992. This policy is consistent with Congressional concerns about the privacy rights of law-abiding firearms owners, discussed further below.

the ability to identify by serial number firearms he or she had diverted and therefore would know with certainty that the firearms had been recovered and that he or she is being investigated. Other interested parties could identify the FFL from the date and description of the firearm and possibly interfere in the investigative process.

56. For example, an FFL may be reporting firearms as stolen when, in reality, he is trafficking the firearms "off of the books." ATF could be investigating these thefts, without immediate suspicion of the FFL. The firearms would be traced to see if they were turning up in crimes. If the trace information and purchase dates were released, the FFL could become aware that the firearms are being traced and that he is being investigated and, therefore, take steps to avoid detection.

57. ATF does not claim Exemption 7(A) for the Purchaser Identification Data after five years but continues to withhold all of these data (except for Purchase Date) to protect the privacy interests of the individuals whose names and addresses are contained in these data elements, as discussed further below



ATF's Withholdings Under FOIA Exemption 7(A) For Data From the Multiple Sales Database Sub-Module

58. ATF withholds all existing data requested by Plaintiffs from the Multiple Sales Database Sub-Module under Exemption 7(A) for a period of two years.[11] ATF has produced to Plaintiff all national data in the Multiple Sales Database Sub-Module through June 30, 1998, except for Purchaser Involved In Multiple Sales Data, which are withheld to protect the purchasers' privacy interests, as discussed further below.

59. ATF withholds for two years all of the multiple sales data requested by Plaintiff because disclosure of the data of a reported multiple sale within that time would compromise ATF's ability to formulate strategies and to discern and act upon possible patterns and trends of firearms trafficking. In ATF's experience, a firearm recovered in connection with a crime within two years of its sale is a strong indicator that the firearm was illegally diverted (*i.e.*, purchased with the intent to commit a crime). Where that sale is found to be part of a multiple sale, such evidence carries even greater weight and may suggest to ATF that the purchase was related to illegal firearms trafficking involving additional weapons and purchasers.

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[11] As explained in ¶ 12, the Multiple Sales Database Sub-Module contains data derived from reports that FFLs must complete under the GCA whenever they sell or otherwise dispose of at least two handguns to any unlicensed person within any five consecutive business days. See 18 U.S.C. § 923(g)(3)(A).

60. A two-year cushion for disclosure of all multiple sales information provides ATF with important protection against public contacts with FFLs or purchasers of multiple sales that could hinder any trafficking-related investigations. Two years also gives ATF an opportunity to study multiple sales patterns among FFLs and purchasers before the general public can, thus making it more difficult for traffickers to study and, therefore, change, their firearms transactions patterns. Thus, in balancing law enforcement concerns against disclosure interests, ATF has decided that, absent Exemption 7(C) privacy concerns, as expressed below, all multiple sales information would be released under FOIA after two years.[12]

61. An ATF case illustrates the necessity of the two-year policy on multiple sales data. ATF agents examining multiple sales reports became aware of a group that was trafficking drugs from New York to North Carolina and guns from North Carolina to New York. Perfecting this case required a great deal of surveillance and extensive investigation that might not have been possible if the multiple sale information were released

[12] The Multiple Sales Database Sub-Module contains data used to develop leads to crimes and trends in trafficking, which require more time to develop than investigations concerning a trace. By contrast, data from the Trace Database Sub-Module concern firearms suspected of being used in a crime already committed. Therefore, with the exception of the nine data elements previously discussed, which are withheld for five years, the rest of the requested trace data can be released sooner than multiple sales data without compromising the intended purpose of collecting the data.



prior to the expiration of the two-year cushion. That is, non-Federal prosecutors, who are aggressively investigating firearms violations without ATF involvement, could have intervened in and inadvertently compromised the investigation, or the violators could have learned that they were under investigation. Moreover, premature disclosure of the multiple sales records could have caused the violators to change their method of operation, such as making single purchases of firearms (*e.g.*, having ten people purchase one firearm each instead of one person purchasing ten firearms), or moving to the secondary gun market such as flea markets and gun shows.

ATF's Withholdings Under FOIA Exemption 7(C) For Data From the Trace Database and Multiple Sales Database Sub-Modules

62. The information withheld under Exemption 7(C) from both the Trace Database Sub-Module and the Multiple Sales Database Sub-Module consists of the names and/or addresses of third parties in a law enforcement database.

63. ATF's concern regarding the privacy interests at issue in this litigation is consistent with other Congressional limitations on the Government's maintenance and disclosure of personal information, such as names and addresses, namely, the Privacy Act of 1974, 5 U.S.C. § 552a (1994 & Supp. IV 1998), the Treasury Department Appropriations Act, Pub. L. No. 95-429, 92 Stat. 1002 (Oct. 10, 1978), and the Firearms Owners' Protection Act, Pub. L. No. 99-308, 100 Stat. 449

(May 19, 1986) ("FOPA," codified at 18 U.S.C. § 926(a)).

64. The Privacy Act restricts the disclosure of personally identifiable records maintained by federal agencies. The Trace Database Sub-Module and the Multiple Sales Database Sub-Module each is a "system of records"—"a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." 5 U.S.C. § 552a(a)(5). Because the data withheld under Exemptions 6 and 7(C) are identifiable by name and/or address and are not required to be disclosed under the FOIA, they are entitled to protection under the Privacy Act.

65. In addition, Congress consistently has restricted ATF's use of firearms licensee records in order to protect the privacy interests of lawful gun owners. The Treasury Department's annual appropriations have been conditioned expressly on the prohibition against the use of appropriated funds to consolidate or centralize records concerning the acquisition and disposition of firearms maintained by FFLs. *See, e.g.*, Pub. L. No. 95- 429, 92 Stat. 1002 (Oct. 10, 1978); Pub. L. No. 106-58, 113 Stat. 430, 434 (Sept. 29, 1999). In fact, the privacy interests of firearms owners is of such Congressional importance that Congress ordered the U.S. General Accounting Office ("GAO") to conduct an investigation of ATF to ensure the agency's compliance with "legislative restrictions on centralizing and consolidating



data from federal firearms licensee records." *See* U.S. Government Accounting Office, Report to the Chairman, Subcommittee on Treasury, Postal Service, and General Government, Committee on Appropriations, House of Representatives, *Federal Firearms Licensee Data: ATF's Compliance with Statutory Restrictions* 1 (Sept. 1996).

66. Likewise, in passing the FOPA, Congress explicitly found that "additional legislation is required to reaffirm the intent of the Congress, as expressed in section 101 of the Gun Control Act of 1968, that 'it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes.'" Pub. L. No. 99-308, 100 Stat. 449.

67. ATF invokes Exemption 7(C) with respect to Recovery Location Data, Possessor and Associates Data, and Purchaser Identification Data (with the exception of the Purchase Date, for which only Exemption 7(A) is claimed) from the Trace Database Sub-Module and Purchaser Involved in Multiple Sales Data[13] from the Multiple

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[13] Purchaser Involved in Multiple Sales Data consists of 11 data elements: Last Name, Middle Name, First Name, Name Suffix, Route Number, Apartment Number, Street Number, Street

Sales Database Sub-Module. ATF does not release any of these data to the public under the FOIA because the minimal public interest in the disclosure of the personal information of individuals contained in these sub-modules does not outweigh the substantial privacy interests at stake. As indicated previously, many of the persons whose names and/or addresses are in the FTS are not suspects or defendants. They simply purchased or possessed firearms or resided near the recovery location of firearms that were subsequently traced for reasons unrelated to their activities. As a practical matter, ATF cannot distinguish the innocents from the suspects because it lacks sufficient information from the requesting agencies.

Recovery Location Data

68. With respect to the Recovery Location Data, ATF withholds the addresses where a firearm involved in a crime was recovered to protect the privacy interests of individuals who live or work at or near that location. The location where a firearm was recovered may be part of the crime scene or may concern the home or business address of the victim, suspect, witness, or an acquaintance thereof. However, ATF does not know whether the individuals who live or work near the recovery location have any connection to the crime other than the recovery of the firearm. For example, if a firearm is recovered in front of the home of an individual, it may be

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Direction, Street Name, Street Suffix, and Zip Code. See Pl.'s Bill Req. 83-86, 93-98, 102.



that this individual has no connection to the firearm and that the criminal dropped or hid the gun on this individual's property. If ATF were to disclose the address of where firearms involved in traces were recovered, this individual could find himself wrongly linked in the public eye to the crime committed with the firearm. Given this individual's innocence in this example, such an association could subject him to considerable embarrassment and harassment.

69. Protection under Exemption 7(C) is necessary to protect the people who may live or work at the specific addresses listed in this category. Although the person(s) at the listed address may have been wholly unconnected to the crime, the mere mentioning of a person's specific identifying information in a law enforcement file, such as Recovery Location Data, can reasonably be expected to invade an individual's privacy.

70. Against these privacy interests, ATF has balanced any possible "public interest" in the Recovery Location Data, as that term has been interpreted by the Courts. The Recovery Location Data is of minimal, if any, public interest because the disclosure of the data tells the public nothing about the operations of ATF. Indeed, very little of the data concerns ATF investigations but rather those of the 17,000 other Federal, State, local, and international law enforcement agencies that submit trace requests to ATF. In light of the absence of any public interest in these addresses, the protection of privacy interests under Exemption 7(C) prevails.

Possessor and Associates Data

71. For similar reasons, ATF withholds the Possessor and Associates Data under Exemption 7(C). The privacy interests of possessors and associates data in their names and addresses outweigh the negligible light this information sheds upon the operations of government. The public release of this information could subject the persons named to harassment and stigma. The possessor of the firearm ultimately may be exonerated in the course of a criminal investigation. Even if the police and/or judicial systems have cleared the possessor of any wrongdoing, the mere mentioning in a law enforcement file may subject the one-time suspect to harassment and embarrassment.

72. Furthermore, the "associates" listed may become or may have been crucial government witnesses or informants in an investigation. Revealing their names could lead to harassment and intimidation by those who would prefer the associate not cooperate with investigators or to false allegations of the person's guilt.

73. In addition, because the agency requesting the trace does not inform ATF of whether possessors and their associates are ever indicted or convicted of any offense, ATF has no way of knowing whether the law enforcement agency requesting the trace believes the possessor or associate to have had any role in the crime. Possessor and associate names and addresses are often mentioned in the Trace Database Sub-Module simply because they were the last known



possessor of the traced firearm or an associate of such person. These individuals simply could be innocent third parties in the wrong place at the wrong time. Given the lack of public interest in the names and addresses of possessors and associates whose relationship to the investigation is unknown, the balance under Exemption 7(C) justifies withholding of these data.

Purchaser Identification Data

74. The Purchaser Identification Data, which consists of the names and addresses of purchasers of traced firearms, are also entitled to protection under Exemption 7(C). This category of data identifies the original purchaser of the gun involved in a crime, even if that purchaser had no connection to the crime whatsoever. Thus, a person who purchased a firearm legally in 1993 and sold the gun in 1995 would appear in the Trace Database Sub-Module as a purchaser, even if the firearm were recovered in a crime and submitted for a trace in 2000. The purchaser does not necessarily have any connection to the crime or to the investigation other than at one time having purchased the traced firearm. Revealing the names of these potentially law-abiding citizens jeopardizes their legitimate privacy interests, as they simply may have engaged in the entirely legal conduct of purchasing a firearm that ended up in the wrong hands at some later time. The association of such an individual with a crime involving a firearm, which the public may infer from the data, could lead to embarrassment and stigma for the purchaser. These are the very kinds of concerns

that motivated Congress to enact the above-referenced appropriations restrictions.

Purchaser Involved in Multiple Sales Data

75. As with the Trace Database Sub-Module data discussed above, ATF never releases the Purchaser Involved In Multiple Sales Data from the Multiple Sales Database Sub-Module under the FOIA because the minimal public interest in the disclosure of this personal information does not outweigh the substantial privacy interests at stake.

76. The purchase of multiple firearms does not by itself constitute illegal activity in any way. However, ATF monitors this information as part of its long-term efforts to track illegal sales and trafficking patterns throughout the country. Revealing the names and addresses of those persons who have engaged in the entirely legal activity of purchasing multiple handguns would inevitably anger these law-abiding citizens and compromise the legitimacy of ATF as an agency that can be entrusted to maintain the confidentiality of its records.

77. Additionally, the privacy interests at stake are not outweighed by the public interest in the disclosure of the information. There is little public interest in the disclosure of names and addresses of citizens who have legally purchased firearms, as this information does not shed any light on ATF's conduct.



ATF's Withholdings Under FOIA Exemption 6 For Data From the Trace Database and Multiple Sales Database Sub-Modules

78. ATF invokes Exemption 6 to protect the same categories of data from the Trace Database Sub-Module and the Multiple Sales Database Sub-Module that are protected under Exemption 7(C): Recovery Location Data, Possessor and Associates Identification Data, Purchaser Identification Data, and Purchaser Involved in Multiple Sales Data. Exemption 6 protects from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). With respect to the Recovery Location Data, Possessor and Associates Identification Data, Purchaser Identification Data, and Multiple Sale Purchaser Identification Data, ATF believes that the third parties' privacy interests in their names and addresses greatly outweighs the minimal public interest in the data. Moreover, there is no reason to believe that the public will obtain a better understanding of the workings of ATF by learning the names and addresses of private citizens who purchased or possessed a firearm involved in a trace, resided or worked where a traced firearm was recovered, or purchased a firearm as part of a multiple sale. Given the absence of any public interest in the data combined with the potential association of these individuals with wrongdoing, the release of the aforementioned data would constitute a clearly unwarranted invasion of privacy.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 9th day of Nov. 12, 2000.

/s/ DAVID L. BENTON
DAVID L. BENTON
Assistant Director,
Field Operations
Bureau of Alcohol,
Tobacco and Firearms



UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

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Case No. 00C3417
Judge George W. Lindberg
Magistrate Judge Morton Denlow

CITY OF CHICAGO, PLAINTIFF

*v.*

UNITED STATES DEPARTMENT OF
THE TREASURY, BUREAU OF ALCOHOL,
TOBACCO AND FIREARMS

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**DECLARATION OF HARVEY RADNEY**

I, Harvey Radney, as if duly sworn, state as follows:

1. I am currently employed by the Chicago Police Department ("CPD") as Deputy Superintendent in charge of investigative services. I have served in this position since February 2000. Prior to being named Deputy Superintendent, I was Commander of the Gangs Investigations Section of the Organized Crime Division, which included the Chicago Anti-Gun Enforcement ("CAGE") Unit. The CAGE Unit was responsible for investigating illegal use and possession of firearms. As part of that function, CAGE team members would request traces from the Bureau of Alcohol, Tobacco and Firearms ("ATF") on guns that CPD recovered. CAGE would then use the trace results received from ATF to investigate and assist in the prosecution of crimes.

2. For at least the last ten years, CPD has requested traces from ATF on every single crime gun CPD recovers. Over the last several years, CPD has recovered and requested traces for an average of approximately 15,000 guns per year.

3. CPD requests a trace on a gun by calling ATF and providing information about the gun, including the manufacturer, model and serial number. CPD will eventually receive back from ATF the trace results after ATF has conducted its investigation on the gun. The trace results we received through at least 1998 contained such information as who manufactured the gun, to which distributor that manufacturer sold the gun and when it was sold; to which dealer the distributor sold the gun and when it was sold; and to which individual the dealer sold the gun and when it was sold. The information contained in these trace results provided to CPD would frequently include information about gun sales made in other cities and states.

4. Attachment 1 to this Declaration contains an example of a trace result we received from ATF in connection with a homicide committed in Chicago. One can tell from the document that we requested that this gun be traced on May 20, 1998. The description of the gun shows that it was a Taurus Model 85, .38 caliber revolver, with serial number PC49972. The document shows that the gun was manufactured in Brazil and was imported into the United States by Taurus International Manufacturing, Inc. Taurus then shipped the gun on March 28, 1996 to a distributor named Riley's, Inc., which is located in Avila, Indiana. The document lists Riley's, Inc.'s Federal Firearms Licensee ("FFL") number, its address and its phone number, as well as the invoice number for that transaction. The document



goes on to show that on July 19, 1996, Riley's, Inc. shipped the gun to Breit & Johnson Sporting Goods, which is located in Elmwood Park, Illinois, a suburb of Chicago. It lists Breit & Johnson's address, phone number and FFL number. It shows that on February 21, 1998, Breit & Johnson sold the gun to Robert Sawicki, a Chicago resident. One can tell from the trace result how the gun got from Brazil to the initial purchaser, and it includes information about entities and transactions outside CPD's jurisdiction namely Brazil, Miami, Florida, Avila, Indiana, and Elmwood Park, Illinois.

5. When CPD requests a trace for a gun it recovers in Chicago, the trace results show how that gun was distributed from a manufacturer to the initial purchaser. The path that the gun took in getting to Chicago likely was through other nations, states and cities, and through the hands of individuals and entities not residing within Chicago. The trace results CPD receives are part of a national database of gun trace information, complied through the efforts of law enforcement agencies around the nation and relating to gun sales around the nation. When CPD receives some of that data in the form of trace requests concerning a gun recovered in Chicago, it almost by necessity includes information about gun transactions in other jurisdictions. CPD does not consider the information that it receives about a gun recovered in Chicago to be proprietary information; rather, CPD views it as being an extract from a shared national database compiled through the efforts of many law enforcement agencies. Similarly, CPD understands that when it submits information to ATF in connection with requests for gun traces, such information will become part of the national database and likely will be shared with other per-

sons who request an extract from that shared national database.

6. CPD uses the raw data it receives from ATF to assist it in its investigation of crimes and in its analysis of gun trafficking patterns. For instance, if the trace result shows that the gun was purchased by John Smith, a Chicago resident, then CPD officers will question Mr. Smith to find out if he was potentially involved in the crime. If he reveals that he previously had transferred the gun to someone else, then CPD will question the person to whom he transferred the gun. In this way, CPD will track down who was the last person to have the gun—and who possibly used it in the crime—and will also learn, more about patterns of gun trafficking in and around Chicago. It is only the information that CPD learns through its own investigation based upon raw trace data that is truly confidential, and the public disclosure of which might possibly be expected to threaten our criminal investigations. We certainly would not want to disclose publically what we do with the trace information we get from ATF—in other words how we analyze and follow up on the data, such as what statements we get from persons we interview or our analysis of physical evidence. However, it is difficult to imagine a scenario where the disclosure of the raw data itself concerning what companies sold the gun and what individual made the initial purchase from which gun dealer would threaten our investigation. In fact, CPD frequently makes this type of information available to the press in the immediate wake of a crime with no adverse consequences.



Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 6, 2000.

By:_____
Harvey Radney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

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Case No. 00C3417
Judge George W. Lindberg
Magistrate Judge Morton Denlow

CITY OF CHICAGO, PLAINTIFF

*v.*

UNITED STATES DEPARTMENT OF
THE TREASURY, BUREAU OF ALCOHOL,
TOBACCO AND FIREARMS

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**DECLARATION OF LEE A. SOLOMON**

Lee A. Solomon, of full age, certifies as follows:

1. I am the Prosecutor of Camden County, New Jersey, and in that capacity serve as the chief law enforcement officer for this County of over 500,000 citizens. I served as Acting Camden County Prosecutor from about May 1996, and was confirmed and have served as the Camden County Prosecutor since about June 1997. My office includes a staff of investigators who, working with local police departments, investigate all major crimes in the County. These investigations include the examination of significant numbers of matters involving firearms used in crime. I am familiar with the process by which the Camden County Prosecutor's Office requests and receives trace information



concerning guns used in crimes from the Bureau of Alcohol, Tobacco and Firearms ("ATF").

2. Between January 1, 1996 and December 31, 1996, the County Prosecutor's Office, or local Camden County municipalities working with this office, requested from the ATF, traces for approximately 200 guns used in crimes in Camden County. This office continues, on an annual basis, to request this type of trace information from the ATF.

3. My office, or a municipal police department, requests a trace on a gun by calling the ATF and providing information about the gun, including the manufacturer, model and serial number. Once this information is provided, the ATF provides trace information about the gun. This information includes the identity of the gun manufacturer, the distributor to whom the manufacturer sold the gun, and the date when it was sold. The information may also include: The identity of a dealer to whom the distributor sold the gun, and the date of such sale; the identity and date of sale for subsequent dealers who handled the gun; and the identity of an individual to whom a dealer sold the gun, and the date of such sale. This information concerning distributors, dealers, and individuals often includes information about sales which took place in locations other than in the County of Camden or the State of New Jersey.

4. This County seeks this distribution information from the ATF because of the use of illegally obtained weapons in crimes committed in Camden County. County investigators attempt to use the information obtained to solve particular crimes. Investigators also use the information to detect patterns of distribution of illegal weapons in Camden County. The Prosecutor's Office also attempts to use this information to mount

County prosecutions for particular crimes committed with a particular gun, and to mount prosecutions against gun traffickers either through the Office of the Camden County Prosecutor or through the office of the U.S. Attorney.

5. My best understanding is that the data accumulated by the ATF about particular guns used in crimes in Camden County becomes part of a national database, maintained by the ATF. The database contains data accumulated throughout the United States that results from inquiries similar to the ones made by Camden County. The County understands and accepts the fact that the data contained in the database will be disclosed to other persons.

6. The County does not oppose the release of nationwide data which includes the raw data accumulated based upon Camden County inquiries. Camden County does not believe that the release of this data will impede ongoing criminal investigations in the County. Ongoing investigations concerning trafficking, based upon ATF investigations, entail the County's access to knowledge which is known to criminals in the trafficking chain, and which is generally known to the public through the media. Therefore, the public disclosure of such information, in the form of its inclusion in a database will not affect a local investigation. The information, which must not be disclosed, is that which the County develops based upon ATF supplied data. The confidentiality of that information would not be compromised by the disclosure of the raw data.



Pursuant to 28 U.S.C. S 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge information and belief.

Executed on December 6, 2000

BY:_____
Lee A. Solomon, Camden County Prosecutor

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

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Case No. 00C3417
Judge George W. Lindberg
Magistrate Judge Morton Denlow

CITY OF CHICAGO, PLAINTIFF

*v.*

UNITED STATES DEPARTMENT OF
THIS TREASURY, BUREAU OF ALCOHOL,
TOBACCO AND FIREARMS

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**DECLARATION OF MICHAEL HALL**

I, Michael Hall, as if duly sworn, states as follows:

1. I am currently employed by the City of Detroit Police Department as Deputy Chief of the Headquarters Bureau. I have served in this position since October 1, 1999. I am familiar with the process by which the Detroit Police Department requests and receives traces of crime guns from ATF.

2. Since at least 1990, the Detroit Police Department has recovered and requested traces for an average of approximately 4,000 guns per year.

3. The Detroit Police Department requests a trace on a gun by calling ATF and providing information about the gun, including the manufacturer, model and serial number. The Detroit Police Department will eventually receive from ATF the trace results. The



trace results we receive contain such information as who manufactured the gun, to which distributor that manufacturer sold the gun and when it was sold; to which dealer the distributor sold the gun and when it was sold; and to which individual the dealer sold the gun and when it was sold. The information contained in these trace results provided to the Detroit Police Department would frequently include information about gun sales in other cities and states.

4. The Detroit Police Department uses the raw data it receives from ATF to assist it in its investigation of crimes and in its analysis of gun trafficking patterns. The raw data we receive from ATF in the form of gun trace results is part of a shared national database and is not proprietary to any federal agency or local police department. We understand that the national database is based on the data submitted by law enforcement agencies around the nation, and that when we submit information to ATF as part of requests for crime gun races, that information becomes part of the shared national database and may be disclosed to other persons when they request raw data from the national database. However, the information that the Detroit Police Department learns through following up on raw trace data it receives from ATF is confidential. The public release of the raw data itself would be unlikely to cause interference with law enforcement activities because the Detroit Police Department would not allow members of the public to know any more about whom we are investigating and the direction of our investigation than they could learn from what is already available in the media.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 20, 2000.

By: _____
Deputy Chief Michael Hall
Detroit Police Department



## TRAC: ATF - New Findings on ATF Criminal Enforcement

### New Findings

■ Referrals for federal prosecution by the Bureau of Alcohol, Tobacco and Firearms have sharply declined during the Clinton Administration, according to Justice Department data. From a peak in fiscal year 1992, ATF matters sent to federal prosecutors declined by 44%, dropping from 9,885 1992 to 5,510 in 1998. (See *graph* and *table*.)

■ While ATF weapons prosecutions also were well below their 1992 peak, there has been a recent upturn in this category of cases, a 25% increase from 1997 to 1998. (See *graph* and *table*.)

■ One result of the decline in ATF prosecutions involving weapons is that the agency was listed as the lead investigator for a smaller proportion of such cases than in the past. In 1992, ATF recommended 88% of firearms prosecutions for illegal procedures and other agencies handled the remaining 12%. By 1998 the share handled by other agencies had doubled to 24%. (See *graph*.)

■ One factor contributing to the drop in ATF enforcement has been cutbacks in its staff. According to the Office of Personnel Management, the number of ATF criminal investigators dropped by 14% in the last seven years, 2,072 in 1992 to 1,779 in 1998. (See *graph*.) For all kinds of full-time ATF employees there was 8% decline. (See *table*.) But because the pace of these declines has been much less than the decline in enforcement (see *table*), other unknown forces or policy changes are apparently at work.

■ ATF administrators have told reporters that the declines in their enforcement actions are related to improved targeting. More focused prosecutions, however, can reasonably be expected to result in longer prison sentences. This has not been the case. During the last seven years, the peak ATF sentence—a median of 57 months—came in 1996. In 1997, the median—half got more and half got less—dropped to 48 months. In 1998, it went to 46 months. (See *table.*)

■ There has been some speculation that the ATF declines might be related to the broad drop in the nation's rate of reported crime, although there is little reliable evidence of declines in major weapons trafficking activity where the feds have the lead enforcement role. But the pattern of ATF declines doesn't mirror crime trends (see *table*), nor explain why ATF's level of activity has fallen relative to weapons enforcement by other federal agencies (see *table*).

■ Despite the recent declines in sentence length, ATF prison sentences were among the longest achieved by the major agencies. The 1998 ATF median sentence of 46 months, for example, compared with 57 months for the DEA, 25 months for the FBI, 21 months for Customs Service, 12 months for the

■ Immigration and Naturalization Service and 5 months for the Internal Revenue Service. The median sentence for all federal agencies was 18 months. Under sentencing guidelines, weapons offenses tend to receive higher sentences than many white collar and regulatory offenses handled by other agencies. (See *graph.*)

■ In regards to its criminal enforcement activities, a bit more than three quarters of all 1998 ATF referrals involved firearms, machine guns and explosives. In



fact, one statute focusing on illegal firearms procedures—18 U.S.C. 922—was the lead charge in 61.5% of ATF's referrals. (See *graph* and *table.*)

■ As in many areas of federal enforcement, the data point to wide regional variations in how the ATF enforces the law in different parts of the nation. In relation to population, for example, there were at least six times more ATF referrals for prosecution in a number of more rural districts like Oklahoma North (Tulsa), Tennessee East (Knoxville), West Virginia South (Charleston) and North Carolina West (Ashville) than in major urban centers such as California North (San Francisco), California Central (Los Angeles), Illinois North (Chicago) and New Jersey (Newark). (See *table.*)

■ Median sentences also were wildly divergent. In three districts—Illinois Central (Springfield), North Carolina East (Raleigh) and North Carolina Middle (Greensboro)—the median 1998 ATF sentences were over 100 months. By contrast, the median sentences—half were more and half were less—In Pennsylvania East (Philadelphia), New York South (Manhattan) and Arizona (Phoenix) were all 36 months or less. (See *table.*)

http://trac.syr.edu/tracatf/findings/aboutATF/newFindings.html 12/14/00

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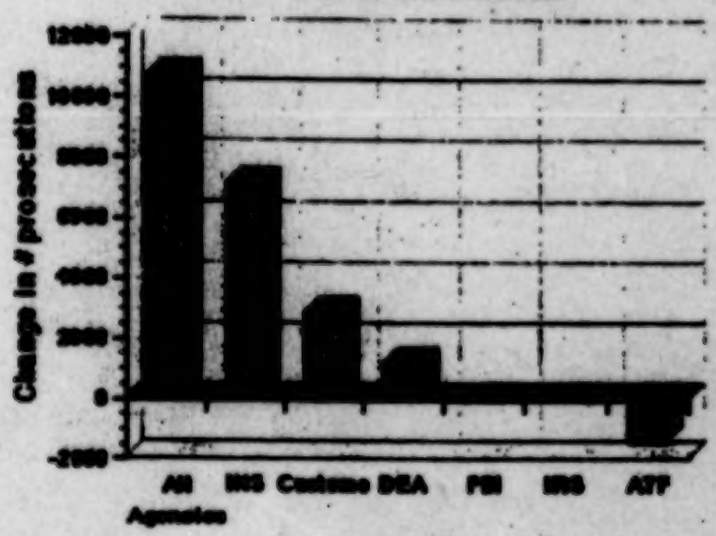
TRACFED

## National Profile and Enforcement Trends Over Time

### ATF Unusual in Its Large Drop in Federal Prosecutions




● 1999 TRAC [non-static] 1985 vs 1999

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UNITED STATES DISTRICT COURT FOR THE
ORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

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Case No. 00C3417
Hon. Judge George W. Lindberg
Mag. Judge Morton Denlow

CITY OF CHICAGO, PLAINTIFF

*v.*

UNITED STATES DEPARTMENT OF
THE TREASURY, BUREAU OF ALCOHOL,
TOBACCO AND FIREARMS, DEFENDANTS

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**DECLARATION**

I, Gerald A. Nunziato, as if duly sworn, state as follows:

1. I am currently employed by Crime Gun Solutions, LLC ("CGS") of Fredrick, Maryland, as Vice President of Operations, a position I have held since January 1999.

2. The information stated herein is based upon personal knowledge and experience.

3. I served in various capacities as an employee of the United States Department of Treasury, Bureau of Alcohol, Tobacco & Firearms ("ATF") from July 1970 to January 1999. Specifically, from October 1991 to October 1998, I was assigned as special agent in charge of ATF's National Tracing Center. From 1991 through 1998, I was the senior agent assigned to the National Tracing Center. In that capacity, I processed all re-

quests for information from local law enforcement agencies, the media, and others, and also supervised or continued to personally respond to requests for information at the National Tracing Center.

4. The National Tracing Center was established to collect and disseminate data relating to the purchase, sale, and tracking of firearms in the United States in order to disrupt the illegal trafficking of guns and to aid in the prevention of violent crimes.

5. In 1996, I was advised by my superiors at ATF that the National Rifle Association ("NRA") was to be provided access to the National Tracing Center for a day-long inspection of its premises, records, recorded electronic data, and data management system (the "Inspection") for purposes of verifying the purpose, format and operation of the National Tracing System Center and Data.

6. Subsequently, Tanya Metaska—then Executive Director of NRA Institute for Legislative Action, an NRA Vice President, an NRA attorney, and two computer consultants acting on behalf of the NRA were granted access to the National Tracing Center and all data contained in the Tracing Center's databases. These NRA representatives were accompanied by my superiors at ATF; Patrick Hines—then Chief of ATF's Congressional Affairs Division, Jack Patterson—then ATF's Legal Counsel, and Peter Gagliardi—then Chief of ATF's Enforcement Division.

7. During the Inspection, the NRA was provided complete access to ATF's databases, facility and personnel, with two exceptions: 1) the NRA was not provided access to the ATF's investigative tactics template; and 2) the NRA was prohibited from interviewing ATF employees in relation to any matter beyond the scope of their employment. However, the NRA was given complete access to the ATF's Crime Gun Trace and Multiple Sale Databases, including, among other things, the Purchaser Identification Data.



8. During the Inspection, the NRA computer consultants were allowed access to ATF's databases, including, but not limited to:

(a) The Trace Database including, among other things, the Purchaser Identification and Recovery Location Data;

(b) The Multiple Sale Database including, among other things, the Purchaser Identification Data; and

(c) The Out-of-Business Database. At a later date, ATF downloaded the information contained in that database.

9. Also during the Inspection, the NRA requested that all firearms purchase and tracing data be purged after one year as opposed to the fifty (50) year data retention policy then in effect. Upon information and belief, in or about early 1998, ATF revised its data retention policy to require that the foregoing data be purged after three years. ATF again revised its policy in early 2000 to provide for a five year data retention policy.

10. In or about late 1994, ATF invited representatives of major ATF offices and a number of local law enforcement agencies to participate in a comprehensive tracing program to augment the national firearms database. An overview of this electronic database was shared on a monthly basis with all constituent members. Initially, I personally disseminated this data.

Later, I supervised the ATF employees charged with the dissemination of this data.

11. During my tenure at ATF, there was no restriction placed on ATF regarding the dissemination of the data to local law enforcement agencies. In fact, ATF provided data from all jurisdictions to all law enforcement agencies requesting such data. I do not recall ever denying a request for any data from any local law enforcement agency. In addition, in certain instances, ATF would take a proactive role in disseminating certain data indicating firearms sales by advising local law enforcement agencies in certain jurisdictions of suspicious activity in the form of heavy firearms sales by certain gun dealers in their jurisdiction.

12. In or about 1993, ATF and thirteen eastern states ranging from Massachusetts to Florida formed what is now known as the "13-State Compact" (the "Compact"). The Compact was designed to address the flow of illegally obtained firearms from gun dealers located in the South to metropolitan areas in the Northeast. Pursuant to the Compact, ATF was designated as the central repository of all tracing data. That data was shared, without restriction, among the states participating in the Compact. At no time was authority or permission required from one jurisdiction participating in the Compact in order to share data from that jurisdiction with another member of the Compact.

13. ATF also made, and continues to make, tracing data available to those individuals and entities contacted during the tracing procedure. For instance, firearms manufacturers, distributors and dealers are all contacted during a trace and requested to provide infor-



mation relating to the identification of parties from whom and to whom a firearm was bought and sold.

14. ATF has also made the tracing data available to journalists. In or about 1989, ATF provided the Atlanta Journal-Constitution with a hard-copy of all of its gun traces. The Journal-Constitution had asked for trace data related to assault weapons. However, this data was not at that time accessible in a computerized format. Consequently, in exchange for providing the Journal-Constitution with the requested traces in paper form, the Journal-Constitution agreed to enter all of the information into a computer database for ATF to use.

Pursuant to 28 U.S.C. § 1746 declare under penalty of perjury that the foregoing it true and correct.

Executed on 15 November 2000.

By:_____
Gerald A. Nunziato

PLAINTIFF'S EXHIBIT 2

# Proposed Redactions of Purchaser and Possessor Data

| | Last Name | First Name | Apt. No. | St. No. | St. Dir. | Street Name | Zip Code | Date of Birth | City of Birth | State of Birth | Sex | Hgt. | Wgt. | ID Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Existing Database | PUBLIC | JOHN | 5A | 2333 | N | CLARK | 60614 | 01/01/60 | CHICAGO | IL | M | 72 | 200 | DL |
| Option 1 | C | J | | | N | CLARK | 60614 | 01/01/60 | CHICAGO | IL | M | 72 | 200 | DL |
| Option 2 | CJ1160CHICAGO | | | | N | CLARK | 60614 | 01/01/60 | CHICAGO | IL | M | 72 | 200 | DL |
| Option 3 | QXMWR4 | | | | N | CLARK | 60614 | 01/01/60 | CHICAGO | IL | M | 72 | 200 | DL |

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

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Case No. 00C3417
Judge George W. Lindberg
Magistrate Judge Morton Denlow

CITY OF CHICAGO, PLAINTIFF

*v.*

UNITED STATES DEPARTMENT OF
THE TREASURY, BUREAU OF ALCOHOL,
TOBACCO AND FIREARMS, DEFENDANT

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**SUPPLEMENTAL DECLARATION OF GERALD A. NUNZIATO**

I, Gerald A. Nunziato, as if duly sworn, state as follows:

1. I am currently employed by Crime Gun Solutions, LLC of Frederick, Maryland, as vice president of operations, a position I have held since January 1999.

2. The information stated herein is based upon personal knowledge and experience.

3. I served in various capacities as an employee of the United States Department of Treasury, Bureau of Alcohol, Tobacco and Firearms ("ATF") from July 1970 to January 1999. Specifically, from October 1991 to October 1998, I was assigned as Special Agent in Charge ("SAC") of ATF's National Tracing Center. From 1991 through 1998, I was the senior agent assigned to the

National Tracing Center. In that capacity, I processed all requests for information from local law enforcement agencies, the media, and others, and also supervised or continued to personally respond to requests for information at the National Tracing Center

4. Based on my experience as being the manager responsible for developing the requirements for both the tracing process as well as the software to support that process, I am very familiar with how the tracing system functioned and what information the software gathered in response to a crime gun trace. I was the sole authority for ATF to approve changes to the tracing process and I was the final authority for accepting the software. During my tenure, the trace requests received by ATF increased from 45,000 per year to over 190,000, and the time to complete the trace was reduced from an average of 45 days to less than 4 days. The changes in the trace process and new software accounted for these dramatic changes. The software system used to support the tracing process was called the Firearms Tracing System ("FTS") or the Crime Gun Trace Database ("CGTD"). The FTS/CGTD was on ATF's mainframe computer and contained data on trace requests, trace results, multiple sales, theft from federal firearm dealers, firearms stolen from interstate commerce, and information to identify federal firearms dealers. The FTS/CGTD produced a printed report on the results of each trace request that included the data outlined above. During my last year with ATF, I oversaw the conversion of the software from a mainframe-based system to a personal computer-based system.

5. I have reviewed the November 9, 2000 DECLARATION OF DAVID L. BENTON, Assistant Director, Field Operations for ATF, and the November



13, 2000 DECLARATION OF DOROTHY A. CHAMBERS, Chief of ATF's Disclosure Division, that were attached to ATF's MOTION FOR SUMMARY JUDGMENT in this lawsuit, and I find that their representations concerning the contents of the databases in question are inaccurate, and that, as a whole, their concerns that disclosing the data ATF has withheld from the City of Chicago ("City") could reasonably be expected to interfere with law enforcement activities, are unfounded.

6. The FTS/CGTD is comprised of information obtained by ATF through the process of tracing guns. A trace is initiated by a request from a law enforcement agency that recovers a gun. It can be submitted by mail, fax or electronically. The purpose of the trace is to identify the individual that purchased the firearm from a federal firearm licensee. The process requires ATF to contact the federal firearm licensees that were involved in the sale of the firearm. Each trace requires that the manufacturer or importer of the firearm be contacted, and that they in turn identify the dealer that purchased the firearm, which may be a wholesaler or retail dealer, until eventually the dealer that sold the firearm to an individual is contacted. The retail dealer that sold the firearm to an individual is asked to identify the purchaser by name, date of birth, place of birth, address and what identification is used. The information obtained during the tracing process, such as the requester's name and address, the description of the firearm, a general crime code, the recovery location, the name and description of the possessor of the firearm, and all the information that identifies the federal firearm licensees involved in the sale of the crime gun, is either input manually or downloaded electronically into

the FTS/CGTD. All the above information is printed on a report that is returned to the requester.

7. The FTS/CGTD is comprised of nothing more than raw data accumulated by ATF during the trace process and is not classified as an intelligence database by ATF. In fact, the ATF intelligence division did not have access to the FTS/CGTD and it did not use the information to support criminal investigations. The FTS/CGTD was developed to track criminal investigation through the use of the "Administrative Record Table" and to prevent premature disclosure of dealer investigations by the use of the "Do Not Contact Dealer Table." The City has not asked for these tables. With the possible exception of these two tables, the FTS/CGTD itself contains no analysis of gun trafficking patterns, and no indication of which, if any, persons or entities are presently, formerly, or potentially under investigation or being prosecuted.

8. One cannot tell from examining the raw data contained in the FTS/CGTD whom law enforcement is investigating, or whether an investigation of any type is ongoing or contemplated with respect to a particular person or a particular gun. In the "Crime Gun Trace Reports (1999)" released on December 1, 2000 ("ATF 1999 Report"), ATF cites a case from St. Louis which indicated a federal firearms dealer from 1989 to 1998 sold over 600 crime guns. This information was contained in many FOIA data releases and it did not have an adverse affect on the investigation. The report also states, "The appearance of an FFL or a first purchaser in association with a crime gun or in association with multiple crime guns does not show that either the FFL or first purchaser has committed unlawful acts. Rather,



such information may provide a starting point for further and more detailed investigations."

9. In my tenure at ATF, I was part of the decision-making process for FOIA requests that involved trace data. I do not recall any investigations or prosecution either by ATF or a state or local law enforcement agency that was damaged or adversely affected by the disclosure of information from the FTS/CGTD.

10. Recognizing that the raw information contained in the FTS/CGTD itself does not permit ATF or local law enforcement—or anyone else who may obtain the database—to analyze illegal gun data, I convinced ATF to develop a personal computer-based software program, Project LEAD, that could be used by law enforcement to analyze the raw FTS/CGTD data. I was the sole authority for ATF to approve changes in Project LEAD and I was the final authority for accepting the software. Project LEAD was loaded on laptop computers to allow the ATF agents to work closely with their counterparts in state and local government. Unfortunately, because of the large amount of data and the limitations of the software, Project LEAD only contained data that corresponded with each of the twenty-two ATF division offices. However, funding was obtained to allow Project LEAD, via the laptop computer and the Internet, to access all the data in the FTS/CGTD anywhere in the country. Project LEAD allowed agents to use the raw data to support investigative leads. For example, Project LEAD was used to identify a major firearms trafficker in New York City. He was known only by a street name by informants, who also described him as a male that was 6'7" tall and weighed over 300 pounds. The investigators queried Project LEAD and asked information to

identify all the males over 300 pounds in the system. The query produced numerous results including men with different names and addresses, but the investigators noticed the guns were being purchased from federal firearms dealers along the Interstate 95 corridor, and they began an investigation. The raw data on this individual was available in the FTS/CGTD for several years and was released under FOIA. The raw data had to be used with other sources of information and learned investigative techniques to make it an effective law enforcement tool. Project LEAD was also used to identify several Southern federal firearms dealers that were part of a conspiracy to sell over 4800 crime guns that were recovered in several Northeastern cities over a period of ten years. Again, this information was released through FOIA, and no one, not even ATF agents and inspectors, used the raw data in FTS/CGTD to link these dealers to gun trafficking. Information in FTS/CGTD must be linked or compared to other data sets, most likely the property of state or local law enforcement agencies, to be effectively used as an investigative tool. Project LEAD is the gateway to use the FTS/CGTD information combined with the local data and unique investigative techniques to convert the raw data into possible leads for conducting an investigation or analyzing the gun problem in a specific area. ATF does not disclose, nor I believe should it disclose, any actual analyses performed by ATF or local law enforcement using Project LEAD, because such analyses could indeed suggest the existence or direction of an ongoing law enforcement investigation. However, the raw data itself would in no way suggest the existence or direction of an investigation. The City has requested only the raw data from the FTS/CGTD and has not



requested analysis performed by ATF or other law enforcement agencies using Project LEAD.

11. What is often required to effectively analyze raw gun trace data is access to intelligence databases, the National Crime Information Center, state registration databases, motor vehicle records, and/or other non-public databases.

12. Mr. Benton provides in paragraph 23 of his DECLARATION an example of an investigation that he believes demonstrates the danger of disclosing the raw trace data. Based on the facts he sets forth in that example, I believe that I was instrumental in identifying the existence of the connection between the Florida and the Ohio gun trafficking schemes, and I believe that the case actually demonstrates how difficult it would be for a member of the public to use raw trace data to interfere with an investigation. In the time period of approximately 1995-96, I spoke with the agent who had identified problems with an Ohio gun dealer, and who suggested that ATF inspect his records and issue a reprimand about their records-keeping practices. I further suggested that he come to the National Tracing Center in West Virginia so that we could use trace data to analyze gun trafficking patterns related to that dealer. The SAC of the ATF office where he was stationed refused to pay for him to fly to West Virginia, so instead I paid for his travel through my budget. When we undertook an extensive analysis of the available data, using information and techniques not available to the general public, we uncovered the connection between the two rings. The trace information we used in our analysis was available to the public, yet no one knew that we were conducting this investigation of

these companies, and the investigation and prosecution were successful.

13. Even if a member of the public were to develop software that could function similar to Project LEAD, that person would not know of the existence or direction of a law enforcement investigation. Indeed, a person using sophisticated software to analyze raw data from the FTS/CGTD could conclude that ATF or local law enforcement should investigate a dealer or an individual, but that person still would have no idea whether ATF or any other law enforcement agency is actually investigating or contemplating an investigation of a dealer or individual. Absent ATF or local law enforcement actually telling a member of the public that they are investigating someone, no one would know of the existence or direction of such an investigation.

14. ATF's concerns that the disclosing of raw data could tip off potential targets is misplaced for other reasons as well. In most gun traces, ATF will contact all of the individuals and entities in the distribution chain for the gun being traced. When contacted, the manufacturer or dealer is made aware that one of the guns it sold turned up in a crime—in fact it is told which particular gun was used in the crime—and it is asked to tell ATF to whom it sold the gun. Therefore, through the trace process, the dealers learn that their guns are being used in crimes and that ATF knows their guns have been used in crimes. Disclosing raw data from the FTS/CGTD showing, among other things, that a particular dealer has had a large number of its guns turn up in crimes reveals nothing that the dealer does not already know; the dealer already knows through the process of giving ATF the information about its guns that each of those guns was used in a crime and to



whom it sold those guns. The dealer knows both that the firearms he/she sold were recovered during a police action and the name of the individual that bought the gun. Many times a dealer that is involved in a criminal activity has been contacted numerous times, possibly even hundreds of times, by ATF in order for firearms to be traced. The investigators want the dealers to be contacted to prevent the perception that they may be under investigation. If an agent has information that the dealer would compromise an investigation, he/she requests that the suspicious dealer be listed in the "Do Not Contact Dealer Table." This table data was not requested by the City.

15. If ATF or another agency does not want a specific dealer to know that its gun is being traced, ATF will not even enter the name or dealer number into the FTS/CGTD, and will use the following closing code: "D.D. . . . There has been a delay in receipt of information from a dealer involved in this trace. The NTC will continue working on the trace until all info has been received. A final report will be sent to you within 30 days." ATF will send a report back to the requester with this statement. This code is frequently used for other trace reports. Reports using this code were automatically generated by the FTS/CGTD if a trace request was more than seven days old and not completed. As a result, anyone who obtains the raw data will not know that the gun dealer in question had the gun traced to him/her, and will not think anything of the fact that the trace could not be completed because of the thousands of guns that cannot be traced for a variety of reasons. According to ATF 1999 Report, the first retail dealer or purchaser could not be

identified through the tracing process 48 percent of the time.

16. ATF's concerns about "tipping off" targeted dealers are further undermined by the fact that ATF has a data field in the FTS/CGTD for the express purpose of avoiding contact with targeted dealers. When requested by a law enforcement agency, ATF can use a "Do Not Contact" field in the FTS/CGTD to indicate that a dealer should not be contacted in connection with that trace. When the Do Not Contact field is utilized, the system does not even permit the name of the dealer or individual who should not be contacted to be entered into the database. As a result, disclosing the raw database, but excluding the Do Not Contact field, would not permit a member of the public who views the database to discern whether an entity is being targeted; instead, as I described above, the trace would simply end with the previous entity in the database and would contain a general closing code. If ATF is sufficiently concerned about tipping off a dealer that is the subject of a Do Not Contact request, then ATF could certainly identify which traces in the FTS/CGTD utilize the Do Not Contact field, and then seek to withhold them from production under FOIA. To my knowledge, in the almost one million trace requests received during my tenure and input into the FTS/CGTD, law enforcement agencies did not utilize the Do Not Contact field for more than about one-hundred (100) traces in the FTS/CGTD at any given time.

17. ATF's concerns about jeopardizing the confidence placed in it by "government intelligence agencies," as David Benton describes in paragraph 21 of his DECLARATION, are also misplaced. The practice at ATF has been that when a particularly sensitive



trace is requested by a government intelligence agency or even a local police department, the trace request is often made to ATF by telephone, and the information entered under the field for requesting agency is simply the name of the SAC, rather than the name of the agency. As there are other instances where the SAC's name is entered in the requester field, no one from the public would know that, for instance, the CIA is looking at a particular gun transaction.

18. The FTS/CGTD is both a process and database, and is more inclusive than ATF represents it to be. The FTS/CGTD includes information on the firearms trace, multiple sales, theft from federal firearms dealers, and the federal firearms dealers' name and address involved with each trace request. Ms. Chambers refers to these data elements as "submodules." Ms. Chambers incorrectly referred to the Federal Licensing System ("FLS") as an unrelated database. The tracing process relies completely on the information in the FLS to conduct a firearms trace. FLS provides ATF with the dealer's exact name, telephone number, and mailing address, and enables ATF to contact the dealer for gun information. FLS is crossed-matched to allow searches by name, address, dealer number, or city and state, and includes dealers that have discontinued business. Information about the dealer is printed on the trace report. The dealer information includes their name, business name, address, license number and the last time they were inspected by ATF. Information on dealers in business is sold by ATF in hardcopy or computer formats. FTS/CGTD also has all the information on individuals responsible for the license, such as corporate officers or partners, ATF inspection results, and whether the dealer is under any restrictions by ATF;

all these facts are essential for anyone analyzing the trace data, but the City under FOIA did not request this information.

19. Perhaps it is this simple question of labeling these so-called "submodules" that led Ms. Chambers to incorrectly claim in paragraphs 18-19 of her DECLARATION that certain data elements do not exist in the requested databases. With the exception of "Magazine Capacity," all of the data elements she listed in paragraph 18 of her DECLARATION as not existing in the requested database do indeed exist in the FTS/CGTD; in fact, each of those data elements was set forth in the database file layout provided to the City on October 4, 2000, in connection with this case. Similarly, with the exception of finish, barrel length, model and magazine capacity, all of the data elements she listed in paragraph 19 of her Declaration as not existing in the requested database do exist in the FTS/CGTD; in fact, each of those data elements was previously provided to the City with regard to 1999 multiple purchases in the State of Illinois, in connection with this case.

PURSUANT TO 28 U.S.C. § 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on December 8, 2000.

By: /s/ GERALD A. NUNZIATO
GERALD A. NUNZIATO



UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

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Case No. 00 C 3417
Hon. Judge George W. Lindberg
Mag. Judge Morton Denlow

CITY OF CHICAGO, PLAINTIFF

*v.*

UNITED STATES DEPARTMENT OF
THE TREASURY, BUREAU OF ALCOHOL,
TOBACCO AND FIREARMS, DEFENDANTS

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**SECOND SUPPLEMENTAL DECLARATION**

I, Gerald A. Nunziato, as if duly sworn, state as follows:

1. I am currently employed by Crime Gun Solutions, LLC ("CGS") of Fredrick, Maryland, as Vice President of Operations, a position I have held since January 1999.

2. The information stated herein is based upon personal knowledge and experience.

3. The purpose of the National Rifle Association ("NRA") visit to the National Tracing Center ("NTC") was to determine if the tracing process and the information systems being used to conduct a firearms trace were in violation of the Firearms Owners Protection Act, specifically was the NTC creating a national registry of firearm owners.

4. The tour included approximately ten people, three representatives from the Headquarters of the Bureau of Alcohol, Tobacco & Firearms ("ATF"), five from the NRA, a NTC staff member, and myself. At various stages of the tour, additional NTC staff members joined this group to assist in the demonstration of the tracing process. The NRA group consisted of NRA executives and one or two computer consultants.

5. The NRA visit was prompted by U.S. Congressman Istook, a member of the appropriations committee that had oversight over ATF and was concerned about potential ATF violations of the Firearms Owners Protection Act. ATF Headquarters representatives told me to be completely open with the NRA and to provide them with access to any data or information they requested. Pursuant to these orders, I advised the NRA that they could ask any question of the NTC staff concerning the tracing process but would not be allowed to ask NTC staff about their personal views on gun control or other political matters.

6. The tour started at the beginning of the trace process, the fax machines. While I was at NTC, it received over 200 requests for traces a day. The NRA reviewed the trace requests to determine if firearms that were found rather than those firearms involved in a police action were being traced by the NTC. They reviewed faxes from four active machines to determine why the gun was being traced. Many of the trace request forms reviewed by the NRA were a mixture of, at that time, current ATF trace request forms, out-of-print trace ATF trace request forms, and freelance requests by the police agencies. Many of these trace request forms only contained the requesters name and the gun description.



7. The NRA was concerned that many of the requests did not list a code for a crime. I informed the NRA that the NTC used the FBI's National Crime Information Center's ("NCIC") codes that identified specific crimes by number. The NRA requested a list of these crime codes. Eventually, the NRA received a list of the NCIC crime codes according to Barnes's letter to ATF critiquing the NTC tour. This list had to be downloaded from the NTC's Firearm Tracing System by a computer specialist at ATF Headquarters in Washington, DC, as I did not have, at that time, hardware or software to download Firearm Tracing System data at the NTC.

8. I emphasized to the NRA that ATF only traces firearms involved in a police action. This policy was repeated in Hynes's letter to the NRA: "Traces should only be requested pursuant to law enforcement investigations." One specific instance of a trace request that I remember one of the NRA computer consultants reviewing was from a police agency in Florida and had detailed information on how the firearm was recovered. The trace involved a firearm that a fisherman snagged while fishing off of a pier in the ocean. The gun was wrapped in a towel that was taped to prevent it from unrolling. The fisherman opened the towel, found the gun, and called the police. The police submitted the trace. I remember this incident, because the NRA consultant stated that this gun must be traced because no one would discard a gun like that if it were not used in a crime. His statement was not well received by the NRA Executives because it was in conflict with their argument that found guns should not be traced.

9. The NRA computer consultants were allowed to view the entire Firearms Tracing System Database and

request any type of query as stated in the declaration of Peter L. Gagliardi. I believe the NRA computer consultants were given hard copies of the Firearms Tracing System database file layout, which described each table and data element in the system.

10. Although the NRA could not physically use the NTC computer terminals because of ATF Information Security policies, a NTC staff member performed the queries on its behalf as requested by the NRA computer consultants. Because most of the review of the information systems questioned by the NRA had to be conducted in a cubical system furniture setting, space was very limited. These cubicles were designed for a single person, and included desk space, a filing cabinet, and a chair. Only four people including the NRA computer consultants, the computer operator, and myself could fit into the cubical to view the computer terminal. The remaining ATF Headquarters staff and NRA executives remained in the hallways outside of the cubicles and could not see what the NRA computer consultants were doing.

11. The NRA computer consultants sat with a NTC data processor to observe both the Firearms Tracing System computer screens and the data being entered into the system. They observed numerous trace requests being entered, and they especially wanted to know what crime code the NTC used when one was not provided by the requesting agency. They viewed every Firearms Tracing System screen, first without data, then with actual data. The NRA computer consultants were authorized to have the NTC query the Firearms Tracing System in any manner they wished and were authorized to view the results of their query.



12. The NRA computer consultants were trying to determine if the NTC was adding additional data from other prohibited sources, such as information from state firearms registration systems or any other data that could be used to support their argument that the NTC was creating a national registry of firearm owners.

13. The NRA computer consultants reviewed the completed Firearm Trace Reports that were provided to the requesting law enforcement agency. The NRA computer consultants were looking for data elements that they believed ATF might have hidden from them. The Firearm Trace Report explained the result of a firearm trace. The Report included: the name and address of the law enforcement agency requesting the firearm trace; a complete description of the firearm; the name and personal identifiers for the individuals from whom the firearm was seized; the address where the firearm was seized; the Federal firearm licensee's name, business name, dealer number, and address; and the name and personal identifiers of the individual that purchased the firearm.

14. The Firearm Trace Report also included investigative information that identified the number of other traces and the related NTC trace number that involved the individuals identified, how many other firearm were recovered from the listed address, and how many other crime-guns were traced to the Federal firearm dealers identified. The Firearm Trace Report also included the name and telephone of the law enforcement agencies that submitted the firearm trace request. The NRA computer consultants were briefed on what data was queried within the Firearms Tracing System databases and how it was used in the report.

15. The NRA computer consultants selected several Firearm Trace Reports and asked to view the actual data screens that were used to prepare the Report. They wanted to be sure that the names were actually listed on a trace request and not derived from an undisclosed source. I showed them the data that produced the completed trace reports in question and they were satisfied. At the conclusion of the tour, the NRA computer consultants indicated that they believed the NTC could not develop a national gun registry with the data maintained in the Firearms Tracing System, and in fact, the equipment and technology being used would not allow creating such a system.

16. The NRA computer consultants were allowed to view the tracing process as it pertained to the various information systems associated with the Firearms Tracing System database in full from the beginning of the process to the end. They watched the NTC staff enter names of the law enforcement agencies requesting the traces, the descriptions of firearms being traced; the names of the individual associated with the recoveries of the firearms, and the locations where the firearms were recovered. They viewed the screens that identified the Federal licensee firearm dealer, by name, dealer number, and address that were involved in the tracing process. They also viewed the purchaser's name, address, date of birth, place of birth identification number, and physical description of the firearm being traced.

17. The NRA requested a briefing on the Project LEAD software used by investigators to develop leads on firearms traffickers. I advised the NRA that Project LEAD was a system that used only data found in the Firearms Tracing System and used this information to



generate investigative reports. I did not show this software to them because it described the methodology ATF used to analyze the raw data in the Firearms Tracing System.

18. The tour of the tracing process lasted for two or three hours, which was more than sufficient time for the NRA computer consultants to view the eight or nine data entry screens found in the Firearms Tracing System, ask detailed questions about the data contained on each screen, and request that the NTC staff perform numerous queries.

19. The NTC is responsible for maintaining the firearms records that Federal firearm dealers who have discontinued business are required, by Federal regulations, to send to ATF. The NRA was particularly concerned about how the NTC stores and uses this information.

20. The records included within this information include a dealer's firearm acquisition and disposition records of firearm sales and the ATF forms completed by the purchaser of a firearm. The records are microfilmed at the NTC and then destroyed by shredding. The dealer number, serial number of a sold gun, and the microfilm cartridge number are entered into a computer system designed and was maintained by Kodak. This information is used by the NTC during the trace process to locate the microfilm frame that corresponds with a serial number. The system does not identity the dealer, individual or firearm by name. The NRA was very concerned about this database and they wanted to obtain a sample download of the information contained in the Kodak system to ensure that no names were being captured. I advised the NRA that I had no soft-

ware or hardware that could produce a download from the Kodak system.

21. I was instructed by the ATF Headquarters staff to contact Kodak for an estimate of the cost to provide the data requested by the NRA. I later obtained a quote of between $10,000 and $15,000 from Kodak. To the best of my knowledge, the NRA paid Kodak to download the information. The software later was made available to ATF by Kodak at no charge to do the same type of download requested by the NRA. If the download were completed, it would have had to come from an ATF Headquarters computer specialist.

22. The NRA computer consultants also reviewed the process used by the NTC to enter Multiple Sales into the database. They were trying again to prove that the NTC was adding additional gun information derived from the Out of Business Section of the NTC Federal firearms dealers are required by Federal regulations to identify individuals by name and submit a Multiple Sales Form to ATF who purchased more than two handguns in a five-day period from the same dealer.

23. The NRA computer consultants were shown the Multiple Sales fields contained within the Firearms Tracing System and were shown actual data, reviewed the hard copies of the Multiple Sales forms, and reviewed the Multiple Sales tables' file layout. They reviewed numerous entries in the Firearms Tracing System, three or four screens for Multiple Sales, and were allowed to compare them with the original documents. They also compared information on a completed trace that indicated it was from a multiple sale to verify that no other information was maintained in the system.



24. I was commended by the ATF Headquarters staff and later by my immediate supervisor for my role in the NRA tour. I was never reprimanded or counseled for providing the NRA with too much information or access to the data in the Firearms Tracing System.

25. The information viewed by the NRA representatives while on tour at the NTC is the same information that the City of Chicago ("City") has requested. Despite numerous requests for complete national data from ATF, and ATF's claims that it previously has provided most of the information, ATF actually has provided only incomplete and old data, with important fields missing, that does not meet the City's request. If ATF were to provide data concerning guns recovered outside the City of Chicago (i.e., nationally) in a manner similar to that which ATF provided concerning guns recovered in Chicago, then ATF would come far closer to satisfying the City's request. The data ATF withholds is essential if the City is to conduct a meaningful analysis of the sources of gun related violence.

26. National data from the FTS system would allow anyone to analyze what actions ATF is taking and could take to regulate the firearms industry as it pertains to crime-guns. The data would identify firearms dealers that illegally sell firearms without completing the necessary documents required by Federal laws and regulations. The names and location of the firearm dealers that are the primary source of crime-guns would be identified in this data. The data would also identify the manufacturers and their specific firearm models that are most commonly used by criminals.

27. This data can be crossed indexed with ATF criminal and regulatory action statistics to determine if

ATF is effectively monitoring the firearms. For example, the City of Chicago has traced over 60,000 crime-guns and has identified over 80,000 names of individuals involved with these crime-guns. The Chicago data could be analyzed to determine if ATF is actively enforcing the Federal firearms laws and regulations.

28. Several studies conducted by leading academics have identified certain firearms dealers by name as the major sources of crime-guns. The national trace data could be used to determine if ATF has taken any action to reduce the number of crime-guns coming from these dealers.

29. Also, the US is a major source of crime-gun to Canada, Mexico, and South America. The data can be used to identify the source of their crime-guns. This data can be used to determine if additional agreements must be made between the Federal agencies that oversee US-Foreign operations to impact on this flow of firearms and whether ATF is upholding its responsibilities with respect to these agreements. Many Foreign leaders have stated that the US government must stop the flow of guns to their countries because they are used by drug lords and/or terrorists.

30. The data can also be used to determine if there are problems with firearm importers not marking firearms properly or what firearms have serial numbers that can be readily obliterated.

31. During my tenure at the National Tracing Center, from September 1991 to October 1998, none of the information derived from the tracing of the firearm was ever purged from the Firearms Tracing System



("FTS") as indicated in Mr. Patrick Hynes letter to the NRA.

32. ATF's Chief Counsel's Office ordered the purchaser names and their identifying information to be purged from the FTS in 1990 or early 1991 based on political pressures from the NRA. However, I personally assisted the ATF Chief Counsel's Office in reexamining their decision to purge names from the tracing process and in late 1991 or early 1992, they reversed their decision and purchaser names were reentered into the FTS system.

33. From 1995 to March 1998, I was responsible for updating the FTS and was never told, advised or ordered by ATF managers or the Chief Counsel's Office to build any type of purging system within the FTS. I was solely responsible for implementing the changes to the FTS that were defined in a FTS reengineering document prepared by a private information system services company for over $500,0000. The Headquarters Information Systems Management Division paid for this contract and supervised the contracted personnel. The contractor was responsible developing the requirements for the upgraded FTS and interviewing ATF Headquarters and NTC personnel that would use the system. This document did not include any information or systems procedures to purge the names of individuals involved in the tracing process. I was never advised of any requirement to purge names nor to my knowledge did the contractor who did the reengineering discover any requirement to purge names obtained during the tracing process. The contractor's final draft was presented to me in May of 1997, and it did not include any requirement to purge of names of individuals involved with the tracing process.

34. I was advised by ATF Headquarters to purge the names of individuals that purchased firearms under the requirements for Federal multiple sales two years after the date they purchased a firearm. However, if the firearm the individual purchased as part of a multiple sale was involved in a crime-gun trace, their names were NOT purged from the multiple sale system. These names were never purged from the FTS

35. The ATF Mainframe computer had a system that required backup tapes to be made and stored at a secured location away from the NTC. These tapes include all data from the FTS and I was never informed of any requirement to purge data from these tapes.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on 20 December 2000.

By:_____
Gerald A. Nunziato



UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

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Case No. 00C3417
HON. JUDGE GEORGE W. LINDBERG
MAG. JUDGE MORTON DENLOW

CITY OF CHICAGO, PLAINTIFF

*v.*

UNITED STATES DEPARTMENT OF
THE TREASURY, BUREAU OF ALCOHOL,
TOBACCO AND FIREARMS, DEFENDANTS

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**THIRD SUPPLEMENTAL DECLARATION**

I, Gerald A. Nunziato, as if duly sworn, state as follows:

1. I am currently employed by Crime Gun Solutions, LLC of Fredrick, Maryland, as Vice President of Operations, a position I have held since January 1999.

2. The information stated herein is based upon personal knowledge and experience.

3. I served is various capacities as an employee of the United States Department of Treasury, Bureau of Alcohol, Tobacco & Firearms ("ATF") from July 1970 to January 1999. Specifically, from October 1991 to October 1998, I was assigned as a special agent in charge of ATF's National Tracing Center("NTC"). From 1991

through 1998, I was the senior agent assigned to the NTC.

4. During my testimony at the hearing in the above-captioned matter, ATF's counsel did not ask me any questions in relation to Exhibit B to Defendant's Opposition to Plaintiff's Motion for Summary Judgment ("Exhibit B"). If ATF's counsel had asked me any questions relating to Exhibit B, I would have provided the testimony contained in this declaration. I expected ATF's counsel to ask me questions about that document at the hearing, and I do not know why he did not do so.

5. Exhibit B was a written response prepared by the ATF to a request for information from an attorney representing the National Rifle Association ("NRA"). Exhibit B was prepared in approximately the Spring of 1996 by an ATF agent assigned to the NTC acting under my supervision. Although I indeed signed the memorandum, I did so only in my role as an agent of ATF; the opinions expressed in that memorandum were the opinions of ATF and not my personal opinions. At that time, the tracing was still rather new and was expanding very quickly. As an initial position, without any analytical analysis or study, and to prevent the appearance that the NRA was setting ATF policy, ATF was against contacting the purchasers of traced guns in the Spring of 1996.

6. As a further response to any questions that ATF's counsel may have asked in relation to Exhibit B, I would have testified that, in approximately the Spring of 1997, the Appropriations Committee for the Department of the Treasury ("Committee") included a line item instructing ATF to use the information contained in the Firearms Tracing System to implement a program to return the guns that it traced ("traced



guns") and had been stolen to their rightful owners. To implement such a program, ATF proposed a test that would have sent a letter to all purchasers of traced guns recovered in New Jersey within a certain time period notifying them of the recovery of their gun. The proposed notification would have stated that if the gun in question had been stolen, and the purchaser could document the theft, ATF would return the gun to the purchaser. If the gun had not been stolen, ATF would request that the purchaser describe the disposition he or she had made of the gun.

7. In addition, I would have testified that local enforcement agencies agreed with this proposal of directly contacting purchasers of traced guns and did not believe that such contact was likely to interfere with ongoing criminal investigations. To the contrary, local law enforcement agencies believed that by directly contacting such purchasers, ATF would gain more information into the disposition of traced guns in the secondary market that could assist the investigation. Likewise, and based on this proposal and the reaction of law enforcement agencies, I do not believe, and have not believed since 1997 while I was still employed by ATF, that the complete release of the purchaser's name in unredacted form could reasonably be expected to interfere with law enforcement purposes. At no time during my over 29 years of experience at ATF, did ATF perform a study into whether the release of the purchaser's name could reasonably be expected to interfere with a law enforcement purpose.

8. In further response to questions relating to Exhibit B, I would have testified that, during a two-week period in 1997, ATF inadvertently sent responses to trace requests to approximately 3,000 purchasers in-

stead of trace requesters. It is my understanding that this inadvertent release of trace information to purchasers did not interfere with any ongoing investigations.

9. The views expressed by ATF in *Hamilton v. Accu-Tek*, No. 95-CV-49, were the opinions of ATF and not my personal views. In fact, my personal views on that matter were in disagreement with ATF's views. As a result, and despite my receipt of a subpoena, ATF refused to allow me to testify in that matter. At the time of the litigation and today, I disagree with the opinions expressed by ATF in the *Hamilton* litigation.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on 14 February 2001.

By:_____
Gerald A. Nunziato



UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

---

Case No. 00C3417
JUDGE GEORGE W. LINDBERG
MAGISTRATE JUDGE MORTON DENLOW

CITY OF CHICAGO, PLAINTIFF

*v.*

UNITED STATES DEPARTMENT OF
THE TREASURY, BUREAU OF ALCOHOL,
TOBACCO AND FIREARMS, DEFENDANTS

---

**DECLARATION OF COLONEL EDWARD M. ROTH**

Colonel Edward M. Roth, declares as follows:

1. I am the President of the Board of Police Commissioners for the City of St. Louis, the body which under the laws of the State of Missouri is the governing board of the Metropolitan Police Department for the City of St. Louis. I was appointed to the Board of Police Commissioners by the Governor of the State of Missouri is 1998 and was elected its President in May 2000. In that capacity, I have been advised of the process by which the St. Louis Metropolitan Police Department requests and receives traces of crime guns from the Bureau of Alcohol, Tobacco and Firearms (ATF).

2. On information and belief, the St. Louis Metropolitan Police Department (SLMPD), since at least

1995, has recovered and requested traces for an average of approximately 2,000 to 3,000 guns per annum.

3. Such requests are made by the SLMPD by providing ATF with information about the gun, including the manufacturer, model and serial number. The SLMPD receives back from ATF the trace results, containing information such as the gun's manufacturer, distributors through the chain of distribution, consumer and date(s) of sale(s); this information can include information about gun sales in other cities and states.

4. The SLMPD uses the data it receives from ATF to assist it in its investigation of crimes and in its analysis of gun trafficking patters, which information on information and belief is part of a shared national database disclosed to other law enforcement agencies. While the information the SLMPD itself gathers through its independent investigatory efforts following receipt of the data supplied by ATF on a pending crime or pattern of crime is often deemed confidential, release of the ATF raw data in gross is unlikely to cause interference with law enforcement activities.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.



Executed on December 7, 2000

_____

Edward M. Roth
Colonel
President of the Board of Police Commissioners
City of St Louis

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

---

Case No. 00C3417
Judge George W. Lindberg

CITY OF CHICAGO, PLAINTIFF

*v.*

UNITED STATES DEPARTMENT OF
THE TREASURY, DEFENDANT

---

**VOL. NO. 1**

**TRANSCRIPT OF PROCEEDINGS**

**JANUARY 24, 2001**

[2]

THE CLERK: 2000 C 3417, City of Chicago versus U.S. Department of Treasury.

MR. FORTI: Good morning, your honor. Michael Forti on behalf of the plaintiff.

MR. RIVERA: Good morning, your honor. William Rivera from the Justice Department on behalf of defendant.

THE COURT: Okay. Refresh me on what we are doing now. Are we having oral argument, or we are having a hearing, I guess.

MR. FORTI: Judge, I think Mr. Rivera and I spoke briefly, and I think we are perhaps both in agreement that we understand that the scope of the hearing really



is to look at whether or not it is feasible and practicable for the Government to make certain deletions assuming the exemptions apply, and to examine in effect 5 USC 552(b), and I believe with that narrow scope, I think we are both prepared to go forward on that issue.

THE COURT: Okay. And the issue relates to whether or not redaction under Exemption 7 is appropriate.

MR. RIVERA: I believe the Judge's order indicated it was Exemption 6 and 7, and I wasn't sure whether your honor meant Exemption 7(a) and (c) or just 7(c), which would be the privacy related law enforcement exemption, along with Exemption 6 which is also privacy.

THE COURT: What's your understanding, Mr. Forti.

MR. FORTI: Well, you Honor, I think what—the way I've looked at this, I think I agree with Mr. Rivera, but what I've looked at this is, rather than going to the—if you will—the merits of the exemption, which has been laid out in our briefs, the issue that we raised in our briefs that the Government did not address in their brief was this question of redaction, and was that feasible.

So I think we are almost going under the, let's say, assumption that 6(c) or 7(a), or 7 (c) are all applicable given—assuming that they are applicable, then the question is, is it—can the data that is not protected reasonably segregable.

THE COURT: Okay. That is my understanding, too.

MR. FORTI: That's great, your Honor.

THE COURT: So it's a really question of whether redaction is feasible.

MR. FORTI: You said it much better than me.

THE COURT: I'm finally focused on where we are.

MR. FORTI: And, Judge, with respect to that, we have one, I guess, minor complication, is that we believe that the Government has the burden of going forward this morning on this issue, but—and we anticipate putting on three witnesses, but the third one is—we would like to put on telephonically.



Transcript of Proceedings, January 24, 2001
**[p.31, line 7 to p.63 line 7]**

**Chambers - Cross by Getter**

[31]

Q. I just have a few follow-up questions for you. In response to some of Mr. Rivera's questions concerning what ATF's policies are about disclosing information under the Freedom of Information Act, you said that there is—there are policies concerning how long you need to keep certain information from being disclosed. Is that right?

A. Yes.

Q. Is it true that you keep certain information protected under Exemption 7(a) for a period of one year?

A. Yes.

Q. And is it true that other information you keep protected under 7(a) for a period of five years?

A. Yes.

Q. How is that policy arrived at—this one-year, five-year policy?

23 A. It was arrived at working with the law enforcement section

24 of the agency to determine what information and the timeframe

25 that information is sensitive to law enforcement

[32]

1 investigations.

2 Q. Do you know when this policy was created?

3 A. The policy—this policy has been sort of an ongoing

4 policy, and some of it started before I became a FOIA officer.

5 Q. What part of it started—you became a FOIA officer three

6 years ago?

7 A. Yes.

8 Q. What part of this policy, this one-year, five-year policy

9 was in place prior to your beginning, if you know?

10 A. The one-year policy.

11 Q. So prior to your beginning with ATF three years ago, all

12 information that was protected under 7(a) was kept for just a

13 period of one year, is that right?

14 A. No, we actually—the difference is that we are releasing



15 additional 7(a) information after five years now. Previously,

16 it was—we had not released any of the information that was

17 withheld under 7(a), other than what we already had determine

18 was disclosable.

19 Q. Okay. Let me make sure I understand this.

20 Prior to beginning three years ago with ATF, what was

21 ATF's policy concerning what it would disclose under one-year

22 versus five years?

23 A. We didn't release any data on a five-year basis. It was

24 the one year.

25 Q. So you released some data after one year, and the rest you

[33]

1 just never released?

2 A. Correct—I mean, it was limited information, though.

3 You understand, we released—basically the policy we have is

4 the same policy from the very beginning of the data elements

5 that we currently release.

6 The five-year policy—we are now releasing

information, 7(a) information; for example, the law enforcement agency involved.

Q. Okay.

A. That information we just—we had not determined and, actually, this database is not that old in the scheme of things. It's like ten years old. And we had not evaluated the fact that possibly the data becomes—some of the law enforcement data that we were withholding becomes stale after a certain time period.

Q. So are you saying that over time, you become less restrictive in terms of what you give out?

A. No.

Q. Have you become more restrictive in what you give out over the years?

A. No, it's really—the only difference is that we have identified that given the age of the data now, as opposed to the beginning of the database, that some data can be released after five years.



Q. So are you saying that because the—that previously

[34]

since the data wasn't five years old to begin with, you didn't release it, but now that it's five years later, ATF has made a decision, well, it's five old, we can let it go?

A. Yes, we have determined that we needed to make that decision.

Q. And when was that decision made?

A. This year.

Q. All right. Well, I think you said the database was ten years old. So what was the policy five years ago when the data that was in there was already five years old? Why did it take an additional four years to release that?

A. We had not addressed the issue and no one had requested the data. Under FOIA, we are always looking at what—normally what you need to do is look at what's requested.

Q. Are you saying that prior to this year—

A. Anything else we have done is, you know, discretionary, at
our discretion.
Q. Are you saying that prior to the year 2000, no one had
asked for ATF trace data before?
A. No, I'm not saying that. I'm saying that no one has asked
us to release or to do any release other than what we had been
— our traditional release had been.
Q. All right. I'm not sure I'm clear on that. What —have

[35]

you gotten requests prior to the year—strike that.
The City of Chicago requested this data in 1998,
1999, right?
A. Right.
Q. Was this policy in place at that point?
A. No. Not the five-year policy. We had data that we
released which is the same data that we release now.
Q. What was the policy at the time you received the City of
Chicago's request in July of 1999?
A. The policy was that we released the data elements that we



believed did not interfere with law enforcement investigations
or the privacy concerns of individuals, and we had a one-year
delay in providing the data.
Q. Okay. And at some point after the request from the City
was received in July 1999, did you change that policy?
A. It wasn't—it was a change in policy based on a number
of factors; requests for this information from various
parties. We just—we reevaluated the entire data-base and
the entire disclosure process.
Q And what did you decide to do?
A. We decided, based on one thing we did—we had been
providing to the public an extract basically of the database.
And about the time of the City of Chicago request and other
interest by media and other FOIA requesters, we had requests
for the tables.

[36]

Q. What do you mean by requests for the tables?

A. The underlying tables of the database which encompasses each data element. So at that time, we reviewed the database element by element to determine which elements needed to be released, and we started with an entire new—but it's virtually the same information, only in table format rather than in extract.

Q. So are you saying that the City of Chicago's request was the first time ATF had received a request for this data in electronic format?

A. No.

Q. What did you do before—so—strike that. Can you tell us some earlier instances when you received requests for electronic data under FOIA?

A. Well, we frequently receive requests for the data. We have a procedure—initially we were not able to provide the data in a format that requesters could use, and that was the first—from the beginning of the database. And then in 98, I believe it was in 98, the database



was reconfigured and we were able to then provide the information on a zip disc. So what we have been doing previously, we had a contractor who had to manipulate the data for the public. We were now able to actually produce this zip disc, and it was much cheaper and it was information that the public could

[37]

manipulate themselves. So we moved to provide the data on the zip disc. We get numerous requests for this data from the media and various public interest groups.

Q. So you made a decision at some point that you would have what you call a zip disc which would be your standard FOIA release disc?

A. Yes.

Q. And it wouldn't matter what entity—I'm sorry, it wouldn't matter what the requesting entity asked for, you would just give them the zip disc?

12 A. Correct.

13 Q. And you wouldn't look at individual— individual

14 situations with a particular gun or a particular crime to make

15 a determination what information to give out, you would just

16 give out the zip disc?

17 A. Correct.

18 Q. Who was involved in making this policy decision as to what

19 to give out and when in 1998 or 1999, whatever you said?

20 MR. RIVERA: Objection, your Honor, relevance. We

21 are trying to keep the scope here to dealing with coding and

22 what is actually redacted or not.

23 I don't know why the underlying policy here is really

24 an issue.

25 MR. GETTER: I think it's relevant. I think

[38]

1 Mr. Rivera went well beyond the scope of the feasibility of

2 redacting the information.

3 THE COURT: I will overrule the objection.

4 BY MR. GETTER:



5 Q. Who was involved in this policy decision as to what to

6 release?

7 A. The FOIA office, the law enforcement segment of the

8 agency, and the computer—the tracing center employees.

9 Q. Can you tell us the names of the individuals?

10 A. Well, myself—and also our legal counsel, I should also

11 add.

12 Richard Eisen, Forest Webb, Gary Foreman, David

13 Benton, That's basically it, I think.

14 Q. Was anyone who does not work for ATF in that meeting?

15 A. No.

16 Q. Do you know if anyone else outside of the people you

17 mentioned that took place in that meeting were consulted, or

18 was this matter discussed with them before you made your

19 decision?

20 A. No.

21 Q. Not that you are aware of?

22 A. No.

23 Q. Is this a written policy, this one-year, five-year

24 release?

25 A. Yes, we do have documentation.

[39]

1 Q. Okay. Do you know what it's called, where it would be

2 located?

3 A. I have it in my office. It's also documented in the—we

4 have a—you know, a table, a set of the tables, a

5 description of the exemptions that we give out to FOIA

6 requesters.

7 It's—the trace table information is on the zip

8 disc, so you can—you know, it's there available to the

9 public.

10 Q. Do you recall a document, sort of a Treasury Department

11 policy manual concerning the Freedom of Information Act and

12 requests for documents from the media and other organizations?

13 A. We have a handbook, a FOIA handbook. Is that what you are

14 referring to?

15 Q. Something that was created in 1988, I believe it was

16 attached to a declaration that you submitted in this case?



17 A. Oh, that's our own—I think you are talking about our

18 own manual order related to disclosure of information.

19 THE COURT: Did you mean 1988?

20 MR. GETTER: Yes.

21 A. Yes, that is our current order related to the division I

22 work in and how we process information requests.

23 BY MR. GETTER:

24 Q. So if—so that's still your guiding principle then in

25 deciding what to give out and what not to give out under FOIA?

[40]

1 A. It's the general guidelines.

2 Q. Okay. Are there more specific guidelines generated from

3 that Treasury Department manual for 1988?

4 A. Are there more —I don't understand what you are asking-

5 Q. I guess what I'm saying is, if this 1988 Treasury

6 Department manual doesn't address a particular type of FOIA

7 request, what do you do?

8 A. Well, I follow the Justice Department Case Guide Book

which is about this thick. It has all the case law related to

each exemption and the procedures, procedural guidelines.

Q. Does the Treasury Department manual for 1988 discuss—

giving documents out to Government agencies?

A. Yes, it does.

Q. And doesn't it say that giving documents to Government

agencies is a routine matter?

A. A routine use.

Q. Ms. Chambers, you said you are familiar with the firearms

tracing system, correct?

A. Yes.

Q Do you have a computer background?

A. No.

Q. Are you actually the person who will process the request

in—a FOIA request in the sense of retrieving the data if

it's electronic?

A. No, but, you know, my unit—we simply have the data on

[41]

the zip. The data is provided to us on the zip.



Q. So when a FOIA request comes in, all you do is, you have a

zip disc and you mail it out?

A. Correct.

Q. Nothing more than that?

A. That's right.

Q. Do you know how difficult or easy it would be to withdraw

or to pull out certain data from the federal—I'm sorry,

from the firearms tracing system database, if asked?

A. No, I'm not a computer expert.

Q. Do you know what type of database runs the FTS, the

firearms tracing system?

A. No.

Q. Do you know what platform it uses?

A. No.

Q. Do you ever write queries to the system to withdraw data?

A. No.

Q. Do you know if you can write a query to the system—I'm

not saying you do it, but do you know if you can write a query

to the system to withdraw certain data and leave other data

in?

MR. RIVERA: Objection, your Honor, vague. Counsel is talking about data. I'm not sure if he's talking about data elements or a particular piece in the data field.

MR. GETTER: Fair enough.

[42]

BY MR. GETTER:

Q. If you receive a request for certain data from the FTS, do you know whether it's possible to write a query that would extract—redact, if you will, certain fields but pull the other fields out so you can give them to the person who requests it?

A. I'm not really sure. When I have a request for data, I would contact the tracing center and ask what would be possible to be done or whatever. I would not—I have no expertise in how to manipulate the data.

Q. Okay. Do you still have Defendant's Exhibit 1 up there?

A. Yes.

Q. This is the chart that you created?



A. Uh hum.

Q. Just for the court reporter's benefit, you have to say—

A. Yes.

Q. Okay, great. Now, you testified that this chart represents a description of what information you provided to the City of Chicago in response to their FOIA request and what information you withheld, is that right?

A. Yes.

Q. And let's look at some of this information. For instance, on the first page, you withheld from July—the first line, do you know what OR—skip that.

[43]

Go to the second line, name of agency requesting trace.

A. Yes.

Q. Could you tell the Court what that means?

A. That's the name of the local law enforcement or other federal agency that would have requested the tracing center to conduct a trace.

Q. So for a particular gun, if the City of Los Angeles

requested the gun be traced, it would say LAPD or something—

some similar code?

A. Yes.

Q. You withheld that data from July 1st, 1995 to the present,

right?

A. Yes.

Q. And you withheld it under Exemption 7(a), which is the

exemption that it could reasonably be expected to interfere

with law enforcement if released, is that right?

A. Yes.

Q. Could you tell me, Ms. Chambers, how releasing the fact

that the Los Angeles Police Department requested this gun

could reasonably be expected to interfere with law enforcement

activities.

MR. RIVERA: Objection, your Honor. Now we are

getting back into what I thought we were not going to be

covering at this hearing, which is the substantive arguments

[44]

on the motion for summary judgment.



I thought we were talking about whether or not

certain redacted information or certain information that they

suggested could be produced while redacting other information

would raise a 6 or 7 question rather than getting into a

rehashing of our arguments on the briefs.

MR. GETTER: Your Honor—I'm sorry.

(Brief interruption.)

THE COURT: I will overrule the objection.

MR. GETTER: Thank you, your Honor.

BY MR. GETTER:

Q. Do you recall the question?

A. You asked me how I felt the name of the requesting agency

could interfere with law enforcement investigation?

Q. Right.

A. And we do believe that is the case, because one of our

concerns is media requesters trying to conduct traces of their

own and getting involved in the middle of investigations, or

any other requester who may know—in other words, if you

know who the requesting agency is, you can go and start

21 questioning them, contacting them, finding out what they are

22 doing on the case, et cetera, et cetera.

23 They do not want to be contacted, or they don't want

24 to have outside parties interfering.

25 Q. So your concern then is that the Los Angeles Times could

[45]

1 request this data under FOIA, and they would know that the

2 Los Angeles Police Department requested a gun with serial

3 number 12345, and that they might contact LAPD, is that right?

4 A. Yes.

5 Q. Okay. And that alone is your basis for withholding that

6 bit of information?

7 MR. RIVERA: Your Honor, again, we have provided

8 affidavits in this matter concerning the various objections,

9 and it seems we are well beyond the scope of this hearing.

10 Ms. Chambers is not the witness we put up here to

11 explain our various withholdings under 7(a), but rather to try



12 and understand what we thought the Judge was asking, which is

13 again whether or not disclosure of certain information would

14 still present a 6 or 7 question with respect to privacy given

15 certain redactions.

16 THE COURT: Well, I think that's exactly what the

17 question asked.

18 MR. GETTER: Your Honor, she doesn't have any

19 background in computers, so if they only wanted here [*sic*] up here

20 to testify as to the feasibility of redacting it, she wouldn't

21 be a witness because she doesn't even know how it's done.

22 THE COURT: Aside from that, I will overrule the

23 objection.

24 MR. GETTER: Thank you, your Honor.

25 BY MR. GETTER:

[46]

1 Q. So your concern then is the LA Times might find out that

2 the LAPD requested a trace on a particular gun and contact

3 them, right?

4 A. Correct.

Q. Now, is it your view that the LAPD doesn't have the
ability to tell the LA Times to pound sand—I will rephrase
it; that the LAPD doesn't have the ability to tell the LA
Times that they don't want to give them any information?
A. I have—my concern is that we are trying to protect
information that could create a problem for investigations,
and I view this as a situation that that could occur.
Q. Do you think it's reasonably likely that the LAPD would
feel compelled to give out confidential information to the LA
Times if they called and asked?
A. I don't know.
Q. You redacted—I think Mr. Rivera pointed you out to
information beginning at the bottom of page one and going to
the top of page two of Defendant's Exhibit 1 pertaining to
recovery relocation information.
This is all information that you redacted under 6,
7(a), and 7(c), is that right?
A. Yes.



Q. So are you telling us that the zip code where a gun is
recovered could implicate an individual's privacy concerns?
A. Yes.

[47]

Q. So if I were to tell you hypothetically that the Chicago
Police Department recovered a gun last week in area code
60614, would you be able to tell me where that gun was
recovered?
A. Not without necessarily with that one piece of
information. What I said, and I said before, is that's not
the only piece of information we have here. It's not the only
piece of information that you would have access to, that you
can connect to this information.
Q. But if you just gave out the zip code under recovery
location information, it wouldn't really give the LA Times or
the Chicago Tribune any detailed information where that gun
was recovered. It could be a 20-square mile area, couldn't

it?

A. You can't look at these data elements in isolation.

Q. Well you've redacted them in isolation, haven't you?

A. No, we've redacted them looking at the whole and what they

are connected to.

Q. Isn't the purpose of redacting, Ms. Chambers, to balance

the interests of the public in knowing versus these privacy or

law enforcement interests that you are seeking to protect?

A. Yes.

Q. Do you think redacting the entire—all the information

under recovery location information strikes that balance?

A. Yes, I do.

[48]

Q. So you think that the public, if it found out the zip code

where a gun was recovered, the public isn't entitled to know

about that; that that might be outweighed by your privacy

concerns?



A. No, I don't.

Q. What if you were to release under that category zip code

and street name. Let's say 60614, which is a congested area

of Chicago, Clark Street.

Would you be able—would the Chicago Tribune no

from the zip code and the fact that it was recovered on Clark

Street—how could that impede law enforcement?

A. That's one isolated example, And as I said to you, if we

give you the information in these data elements, there are

other locations in the United States that would not have the

same amount of individuals living on that street in that zip

code.

Q. Well, let's take—let's keep it to zip code then. What

if there was a gun recovered in Montana, and there are still

four or 500,000—do you know how many zip codes there are in

the state of Montana?

A. No.

Q. Do you know how many people live in the least populated

23 zip code in the State of Montana?

24 A. No.

25 Q. Is that something you think you might—should look at in

[49]

1 deciding whether or not you redact certain information. Isn't

2 that part of the balancing process?

3 A. No. It's not because we are looking at the public

4 interest in disclosure, and the—whether or not disclosing

5 these elements would provide any information about government

6 operations.

7 Q. So your view is that—is the public interest in your

8 view to be balanced in considering whether the information

9 should be released under 7(a), or is it simply an analysis of

10 whether it would—could reasonably be expected to interfere

11 with law enforcement?

12 A. I don't understand your question.

13 Q. Okay. Under 7(a), what do you consider in deciding

14 whether to release information?



15 A. Whether it would interfere with law enforcement

16 investigations.

17 Q. So the public interest doesn't really impact whether you

18 give it out it under 7(a) or not, right?

19 A. Right.

20 Q. It only impacts 7(c) and 6?

21 A. Correct.

22 Q. So under 7(a), you would have—in order—you—I'm

23 sorry.

24 You withheld the zip code under recovery location

25 under 7(a). So I presume that means that you think that

[50]

1 giving out just the zip code would allow someone to somehow

2 interfere with law enforcement if they knew that a gun was

3 recovered within a zip code?

4 A. But it's not just a zip code.

5 Q. But you could give out just a zip code, couldn't you?

6 A. You have to recognize that in this database, all this

7 information has already been—is already in the public

domain.

Q. I'm not sure I understand that.

A. All the rest of the data elements are out there. We are

not talking now about taking a database that's never been

reviewed and determining some other way to decide which

elements are harmful.

The information that's—that has been made publicly

available that can be connected to the fields you are now

talking about is in the public domain.

So if you want to add other fields, they can be

connected to the information that's already publicly

available, and that's what I'm saying.

Q. Are you telling me—are you telling me that simply by

releasing the zip code for where a gun is recovered, that

somehow someone could figure out how to interfere with a law

enforcement activity?

What are they going to do, stand in the middle of the

zip code and say everybody run—



[51]

A. I'm telling you, the other information about the same set

of elements—the information about the possessor, you know,

his date of birth, other things I mentioned before, in

combination could allow someone to identify the individual.

Q. But you withheld that data also.

A. No, there is—not the date of birth.

Q. Oh.

A. There are other elements that we release.

Q. So with the zip code and the date of birth, I could figure

out how to interfere with law enforcement activity?

A. That together with the other information you can find out

from public sources about the individual or the location or

the—whatever, you could interfere with investigations

Q. With the zip code and date of birth, how in the world

could I figure out who's involved?

A. I keep telling you that that's not the entire amount of

information that you are dealing with.

Q. What other information is there?

A. There is all the information that we release on the zip
already.
Q. Okay.
A. Every table in the database—you know—we have gone
through with a fine tooth comb, trying to release the most
information that we believe possible without interfering with
law enforcement and without implicating individuals in

[52]

criminal investigations.
THE COURT: Let me ask, this has basically been
hypothesized. Was there any study underlying this that said
that by releasing the zip code and the date of birth, or
whatever elements, that there were 25 or 25,000 cases that
were compromised?
Was there any actual research done, or is it
basically—
A. No, we actually did do different data runs. We did do
some data runs on different areas.



THE COURT: Where investigations were compromised?
A. Where you could pinpoint —
THE COURT: I mean, where actually they were
compromised?
A. Oh, compromised, no. That's why we withhold the data.
THE COURT: Okay. Do you have a body of compromised
investigations; in other words, someone said because of what
you released, this investigation went south?
A. No, we don't because we haven't—it's been one of our
problems all along in—you know, we don't— because we have
always withheld the data, that's why we don't have any
compromises.
THE COURT: Okay. I don't want to get involved in
the litigation here, but would it then be called speculative?
A. We don't believe it is because we think when you look at

[53]

—when you do data runs and—and based on various elements,

you can come up with investigations. You know, we have done

that looking at the public disc.

THE COURT: Is there a presumption underlying this

that felons are intelligent?

A. Yes, I guess, or in fact now that things are on the

Internet immediately, and they all have access to it as well

as anyone else.

BY MR. GETTER:

Q. Ms. Chambers, you said in response to one of the Court's

questions that there has not been, to your knowledge, any

instance where releasing data compromised an investigation

because you have been holding back, is that right?

You are nodding your head. I assume sum that means

yes?

A. Yes, I'm sorry.

Q. Some of this information you withhold just for five years,

right?

A. Yes.



Q. So after five years, you are going to release — in fact,

you have released some of this information?

A. Correct.

Q. Is it safe to assume, Ms. Chambers, that some

investigations out there are older than five years?

A. it's possible.

[54]

Q. And if this information that's older than five years is

released concerning an investigation that's still open and

older than five years, is that a safe assumption that that's

happened on occasion?

A. What's happened?

Q. Let me rephrase that. Is it a safe assumption given the

size of this database that some information has been released

after a period of five years where the investigation

underlying that trace is still open?

A. It's possible.

Q. Given that there are about a million point two entries,

isn't it probable.

MR. RIVERA: Objection, your Honor, calls for

speculation.

THE COURT: Sustained.

MR. GETTER: All right. I will withdraw that question.

BY MR. GETTER:

Q. Given that it's possible that this has happened, still you've never had anyone call and say we had an investigation compromised because you released the data, is that right?

A. Correct.

THE COURT: Let me ask the City, is the information that is five years old as valuable or valuable to your needs?

MR. GETTER: It has some value, but not much. We

[55]

would like it, but the information we want is the fresh information.

THE COURT: I'm trying to work out a settlement.

MR. GETTER: Well, we have tried too, Judge.

BY MR. GETTER:

Q. Ms. Chambers—

THE COURT: Let me ask another question. Again, I am



hoping that I'm just shortening this thing. I don't want to get involved in the parties' strategies.

But is it also possible to determine from your database what investigations are closed?

A. No, your Honor, that's part of the problem, because so many of the investigations are State and local, and we have no way of knowing out of these million traces when their cases are closed. They don't provide us with that information, and that's been a part of the problem.

THE COURT: Would that be a difficult determination to make?

A. Yes, your Honor, we don't believe it's even possible to contact—I can't remember how many thousands of State and local agencies there are, but it would be very burdensome, an almost impossible task, I think, to follow up with them constantly on whether or not something closes.

THE COURT: But they do report to you that something

25 is open, right—somehow? I mean a possession or something

[56]

1 —how do you get your data?

2 A. The trace—we receive a request for a trace from the

3 State and local agency, and that indicates that they have the

4 gun, or located a gun in connection with a possible crime.

5 And we trace the weapon and provide them with the

6 information, but we don't know what happens after that.

7 BY MR. GETTER:

8 Q. Ms. Chambers, some of the 1.2 million gun traces in your

9 database were initiated by ATF itself, correct?

10 A. Correct.

11 Q. ATF would certainly know when those investigations are an

12 open or closed, wouldn't it?

13 A. Yes.

14 Q. So at least for those entries—

15 A. Yes, right—

16 Q. Let me finish my question. For at least those entries

17 initiated by ATF, you know when that investigation is open or



18 closed?

19 A. Yes.

20 Q. And as far as the ability of ATF to know whether a State

21 or local investigation is open or closed, there is a table in

22 the database called administrative records field, isn't there?

23 A. Yes, I believe so.

24 Q. And the administrative records table is basically an open

25 field that allows ATF or—that allows ATF to enter certain

[57]

1 data unique to that investigation, right?

2 A. Yes.

3 Q. And ATF at a local law enforcement's request can put

4 information in there as well, right?

5 A. I believe so.

6 Q. So theoretically ATF could have a notation in that

7 database telling them what investigations are open and what

8 investigations are closed, right?

9 A. But the State would have to provide—the State and local

would have to provide us with that information when the case
closes.
Q. Has ATF ever asked for that information?
A. I don't believe so.
THE COURT: Let me—I'm not sure whether you asked
this or not. Do the same strictures apply to the release of
ATF information to ATF investigators?
A. Yes.
THE COURT: So they can't get it any better than the
Illinois State Police or the City of Chicago, is that right?
A. I'm not—
THE COURT: In other words, is ATF substantively on
the same standing—have the same standing with regard to
getting information from your files as the City of Chicago, or
DEA, or the State of Illinois, or—in other words, do they
have any benefit from this—does ATF investigations benefit



[58]

from receiving information that you would not make available
to others—other investigative agencies?
A. Do you mean does ATF use the trace information as a tool
to—for example, determine whether there are patterns of
firearms trafficking or something like that?
THE COURT: Well, for example, if ATF wanted—if ATF wanted to do what the City of Chicago is doing —or wants
to do, would they be any better able to do it than the City of
Chicago, or would the same data fields be prohibited to ATF
internally?
A. No, we use the information internally. That's what we do.
THE COURT: So there is no blockage for ATF?
A. No, no.
THE COURT: Is there any concern about privacy there?
A. Yes. I mean, the way that we would use the data would be
to do statistical reporting and things like that, but not—
THE COURT: But not for investigation?

A. Yes, we would use it for investigation—

THE COURT: So you would use it for any purpose for

ATF?

A. Yes, yes.

THE COURT: But it would be denied to anybody outside

of ATF?

A. Well, it goes back to the State and locals, and we share

with State and locals their own jurisdictional data. If they

[59]

come and they ask again—we give them back the traces. They

request information initially, but if they come back and ask

us for the information related to any trace information,

related to their jurisdiction, we give it back to them under

the routine use provisions.

But we only give them the data for their

jurisdiction. We don't give them the data for other

jurisdictions because we don't know whether those

investigations are open or closed, and we feel that—

THE COURT: Refresh me, are you looking for the City



of Chicago only?

MR. GETTER: We've gotten City of Chicago only. We

are looking for national.

THE COURT: National, okay. So I guess the answer is

that—let's see—I'm not sure what the answer is. I'm not

sure how my question—

MR. RIVERA: Your Honor, if I could just make a

suggestion in terms of your questioning of Ms. Chambers.

Sometimes I think Ms. Chambers is thinking of FOIA,

and sometimes it deals with other statutes under which ATF

provides information.

Since we are talking about FOIA, perhaps that might

be part of the confusion for Ms. Chambers here.

A. When I say we can use, I mean under the Gun Control Act,

not the Freedom of Information.

[60]

MR. RIVERA: So since we are talking about FOIA

exemptions, I'm trying to make sure that the witness doesn't

get confused either.

A. When we provide information to State and locals, their own jurisdictional information, that is done under the Gun Control Act, not under the Freedom of Information Act.

BY MR. GETTER:

Q. When you provide a trace report to the City of Chicago concerning a gun recovered in the City of Chicago, it contains information concerning gun transactions elsewhere in the country, doesn't it?

A. I don't know because, again, now, as Mr. Rivera said, I don't do that. I'm the FOIA disclosure officer. The gun control requests are done by the tracing center.

Q. So someone from the tracing center would know whether the City of Chicago receives information about transactions in other states as part of requests about guns recovered in the City of Chicago, is that right?

A. They would know that.

Q. Understanding that you are not the Gun Control Act



officer, does it trouble you that some privacy issues could be implicated merely by virtue of giving the City of Chicago information under the Gun Control Act?

MR. RIVERA: Objection, your Honor, to the form of the question. I'm not sure what it means, does it trouble you

[61]

—

MR. GETTER: I could rephrase it.

THE COURT: All right.

BY MR. GETTER:

Q. Do you believe that there is a privacy interest that's compromised by virtue of giving the City of Chicago data concerning guns recovered in the City of Chicago pursuant to the Gun Control Act?

A. We have—under the privacy act, we have routine use provisions which enable us to provide law enforcement information to other law enforcement agencies. It's an exception to the privacy act provisions.

Q. The same privacy issues are at stake, aren't they?

A. But agencies have to be able to share data, especially law enforcement. So there have been provisions made for that possibility.

Q. It's important for law enforcement agencies to share data, isn't it?

A. Yes.

Q. Because law enforcement agencies need to understand why crime is occurring in their jurisdiction, don't they?

A. Yes.

Q. And part of understanding why crime is occurring in their jurisdiction is understanding how the guns get there, right?

A. Yes.

[62]

Q. And it would certainly, in your view, assist any municipality, any city that wants to understand why—how crime is occurring in its jurisdiction, to understand the nationwide distribution patterns of guns, wouldn't it?



A. I don't know for sure.

Q. Are you—do you know who Jimmy Wooten is?

A. Yes I do.

Q. Who is Jimmy Wooten?

A. He was formerly the Assistant Director for Firearms.

Q. Formerly?

A. Yes.

Q. Is he still with ATF?

A. Yes, I believe so.

Q. And are you aware that Mr. Wooten responded to a City of Chicago request for information under the Gun Control Act, the same information?

MR. RIVERA: Your Honor, again, I'm going to object.

We have gone well beyond the scope. This hearing—in fact, this part of the lawsuit is all about FOIA. Whatever the Gun Control Act does or doesn't provide, or whatever exchanges were—or information was exchanged concerning the Gun Control Act doesn't have anything to do with, again, what I

23 thought was the limited purpose of this hearing, which, (a),

24 obviously is FOIA, but, (b), is also about certain coding and

25 certain redactions.

[63]

1 And I think we have gone well beyond this, and it's

2 really becoming much more of a hearing on the substantive

3 motions for summary judgment.

4 THE COURT: well, I will overrule the objection.

5 Obviously, anything that I determine was irrelevant I will

6 disregard, but it sounds like to me it's in the same general

7 area, and it's helpful to the Court.



Transcript of Proceedings, January 24, 2001
**[p.74, line 17 to p.78 line 23]**

**Chambers - Cross by Getter**

[74]

17 Q. Okay. You said—you testified in response to some of

18 Rivera's questions that you believed it would be burdensome to

19 apply some sort of a unique identifier code to information in

20 the database, is that right?

21 A. Yes.

22 Q. But you don't have any computer experience, is that right?

23 A. Correct.

24 Q. Okay. So actually you don't know how burdensome or not

25 burdensome it would be to apply such a code, do you?

[75]

1 A. Not on—based on my own knowledge.

2 Q. You don't know whether it would be ten minutes or ten

3 hours?

4 A. No, I would have to rely on the computer specialist.

5 Q. Personally, you have no knowledge?

A. Correct.

Q. Okay. You also testified that you thought that applying

such a unique identifier code would create a document?

A. It would create a data element that's different than the

data elements that currently exist.

Q. Okay. Help me out here. What do you mean by create a

document? What does it mean in your view to create a document

in this database?

A. It's an element that doesn't exist today, and you are

asking us tc generate that element, to create it.

Q. So in your view, if—strike that.

Isn't a database just a collection of data?

A. Yes.

Q. The data in the FTS is just a mass of data,—isn't it?

A. No, it's an organized mass.

Q. Organized chaos?

A. It's indexed, it's retrievable.

Q. It's retrievable. So you can ask for any data you want,

or someone else can do it for you from the FTS, right?



A. If the elements are there.

[76]

Q. Okay. In, fact when you do a—when you respond to a

FOIA request, all you are doing is entering query to this

database that calls up certain information, right?

A. It depends on what the—what is asked for. I don't know

—I mean, I don't know what you mean.

Q. Okay. If you are asked for the entire database—I'm not

saying that you would give it out but, theoretically, if you

were asked for the entire database, you would enter a query

that would give you the whole database in some fashion, right?

A. You are talking about a printout or putting it onto a—a

printout or putting it onto an electronic media.

Q. And if you received a FOIA request for some but not all of

the data, then you would enter a query that would call up some

of the information but leave other information out, is that

right?

A. What we are doing now with the trace information is
providing the zip. We are not doing queries. Queries are not
required under FOIA.
Q. That wasn't my question. My question is, theoretically,
if you were asked to bring up—to produce some but not all
of the database, you or someone else from ATF would just enter
a query and the data would come up in the form that you have
requested, right?
A. For FOIA purposes, we would not do that. We would give
them the disc.

[77]

Q. I understand that. Let's go back a step. You created the
zip disc by querying the database to call up certain data in
the form of certain fields, right?
A. Yes.
Q. And you could have queried the database so that it would
come up in any number of different fields, right?
A. Right.



Q. You could have called up just name and address, or you
could have called up 30 fields. It's up to you, right?
A. Yes.
Q. And you could have included whatever portion of the data
that you wanted in a field. For instance, if you called up -
wanted to call up the first name, you could call up the first
name, or you could call up part of the first name, right?
A. I don't know that answer.
Q. Okay. In your mind, does calling up some but not all of
the data from the FTS database constitute creating a document?
A. No.
Q. And in producing the zip—in creating the zip disc, you
were essentially redacting certain information that ATF
believed would compromise law enforcement or privacy, correct?
A. Correct.
Q. So you essentially deleted some of the data when you
called up information from the database, right?
A. Right.

[78]

Q. In your mind, that did not constitute creating a new
document, did it?
A. No.
Q. If your superiors at ATF today were to say to you—they
are not here—but tomorrow were to say to you, Ms.
Chambers—they probably call you Dorothy—we want to make
a new zip disc, and we want to add this one particular field
to it. We weren't including zip code, but now we want to
include zip code.
So you do a new—or someone for you does a new
query, and they include all fields that are there now plus zip
code. Is that creating a new document?
A. No, not as long as the field existed.
Q. If they say to you, we don't want to give out the entire
zip code, we just want to give out the first three digits of
the zip code; so let's have a field for the first three digits
of the zip code plus everything else. Is that creating a new



document?
A. No, I believe that would be a type of redaction of
information that is there.
Q. Because the information that you are calling up is already.
in this organized mess of a database?

* * * * *

Transcript of Proceedings, January 24, 2001
**[p.87, line 3 to p.88, line 12]**

**Chambers - Redirect by Rivera**

[87]

3 And we believe that the combination of elements other

4 than the ones we have already tried to disclose would create a

5 problem.

6 THE COURT: I'm again going back to my very first

7 question. But you don't know that that's true. You are

8 speculating. I mean, no studies have been done?

9 A. Correct, no studies have been done.

10 THE COURT: And doesn't the fact that there is

11 resources out there to acquire the information, some of which

12 you have mentioned—wouldn't that militate against the

13 Government ever releasing anything because it could always

14 invade someone's privacy when you put the totality—for

15 example, people hire tracers every day, people who go out to

16 find their parents, their mother, 52 years after their birth,

17 and the tracers find them.



18 So, really, who needs the Freedom of Information Act.

19 I mean, everything can be found anyway.

20 A. Well, that's true, but I think in this case it's different

21 because we are talking about investigations and specific

22 instances of investigatory information.

23 Unless you have some of these elements, you can't go

24 and get the other elements.

25 THE COURT: Okay. That's with regard to compromising

[88]

1 ongoing investigations. Then once the investigation is over

2 —and apparently as far as ATF is concerned, no investigation

3 is ever over because you have no methodology for determining

4 —for example, here we file a J-6 with the Clerk's Office and

5 the case is terminated.

6 But you don't have a system to notify you that a case

7 is over, so is it's in perpetuity, is it not?

8 A. Right, but that's why we have employed the five-year old

9 data rule for the law enforcement data.

10 THE COURT: Okay. Is there any studies underlying

11 the choice of five years?

12 A We use the statute of limitations for the Gun Control Act.

* * * * *



Transcript of Proceedings, January 31, 2001
**[p.156, line 15 to p. 157 line 15]**

**Webb - Cross by Getter**

[156]

15 Q. So as a result of ATF contacting these dealers, as well as

16 manufacturers, for that matter, the person who ATF calls knows

17 that the crime gun, the gun in question you are calling about,

18 has passed through the hands of the person to whom you sold it

19 to, right?

20 A. Yes, they should be. They are telling us who—if you

21 are talking about a retail dealer, they sold it to a private

22 individual; if you are talking about a wholesaler, they

23 shipped it to another federal licensee, and they would tell us

24 that information.

25 Q. So when ATF calls, for instance, a dealer, a retail

[157]

1 dealer, and tells them we need the information on a gun with

2 serial number 123, that dealer is going to know when it looks

3 up in its records who it sold its gun to, that it sold a crime

4 gun to John Doe, right?

5 A. They should, yes.

6 Q. And the dealer might also know, or at least it would be

7 safe for him to assume by virtue of the contact in the trace

8 process, that there might be an investigation ongoing for that

9 gun, right?

10 A. He should conclude that, yes.

11 Q. So if a dealer is in on it, if a dealer is doing something

12 illegal, then can't he simply tell the individual who he sold

13 the gun to, to watch out because local law enforcement and the

14 ATF knows about the gun?

15 A. Yes.

* * * * *



Transcript of Proceedings, January 31, 2001
**[p. 163, line 19 to p.166 line 22]**

**Webb - Cross by Getter**

[163]

19 Q. ATF provides a zip disc in response to FOIA requests now,

20 doesn't it?

21 A. Yes.

22 Q. And that zip disc contains portions of the Federal

23 Firearms Licensing or FFL number that indicate region and

24 state for the dealer, right?

25 A. For traced firearms, yes.

[164]

1 Q. What if you've got a state like Maryland where there are

2 only about a hundred dealers in the whole state. Doesn't that

3 already threaten law enforcement near you?

4 A. It tends to reduce the universe of possible dealers that

5 —that that particular dealer could be.

6 Q. But you give it out anyway, don't you?

7 A. The information is given out, yes.

8 Q. Are you aware of any studies that ATF has performed

indicating the likelihood of the release of particular information from the trace database causing interference with law enforcement activities?

A. No, no.

Q. Are you aware of any instances where information disclosed from the trace database has resulted in an interference with law enforcement activities?

A. No, I'm not.

Q. I want to ask you about something that you may have said at the end of your last—last week's testimony. I want to make sure I got it right.

Did you say that ATF has no system in place to create unique identifier codes—from the trace database?

A. We—we use codes in the database. We use coding to—for the purpose of keeping our data as good as we could get it. We would commonly refer to those as decode—d-e-c-o-d-e—decode tables. So there is coding that is done in that



[165]

database.

Is your question, do we convert data to some hidden code? No, we don't do that.

Q. I will ask, do you have the capability of doing it—of encrypting? Is that the right word?

A. The technical capability, I'm sure. I'm not a technical expert, but with all of the technology that we have today, I'm sure that we have the capability to create a code, yes.

Q. But you don't know how long it would take to do something like that, do you?

A. It's not my area of expertise, no,

Q. Who would know that, by the way?

A. Probably our Office of Science and Technology, someone within that office.

Q. Is Mr. Foreman from that office?

A. No, he works for the National Tracing Center.

Q. You mentioned earlier this morning—Mr. Rivera asked you some questions about the recovery location data, and he—and

you said that in combination with the date of birth, some
redacted address information could give you the identity of an
individual, is that right?
A. Yes, the street in combination with the other information
that's already released.
Q. The recovery location table doesn't contain date of birth
field, does it? Does the recovery location table—

[166]

A. No—
Q. —contain a date of birth field?
A. I'm not sure. I believe that would come in the individual
tables.
Q. So if—
A. When you are talking about within the system, and
different tables, and all this data is linked together from
those tables utilizing the trace number.
So when you look at the information concerning a
particular trace, you've got data that's coming from a
recovery table and you've got data coming from individual



tables.
So whether the date of birth is in that particular
table or not, I don't believe it is. That's probably in an
individual table.
Q. But the recovery location can be something like a guy who
possesses the gun, drops the gun in front of a business and
runs down the street, right?
A. It very well could be.
Q. Okay. So how would the date of birth of the owner of a
company where the gun was found be in the database?
A. It probably would not be in that particular case.

* * * * *

Transcript of Proceedings, January 31, 2001
**[p. 167 line 18 to p. 180, line 5]**

**Nunziato - Direct by Roache**

[167]

18 Q. Could you state and spell your name for the record.

19 A. Yes, my name is Gerald A. Nunziato; G-e-r-a-1-d,

20 N-u-z-i-a-t-o.

21 Q. Where are you currently employed?

22 A. I'm the vice president of operations for Crime Gun

23 Solutions in Frederick, Maryland.

24 Q. And how long have you held that position?

25 A. Since January, 1999.

[168]

1 Q. Where were you employed before that?

2 A. Prior to that, I was a special agent with the Bureau of

3 Alcohol, Tobacco & Firearms.

4 Q. When did you start working for ATF?

5 A. In July of 1970.

6 Q. And when did you leave ATF?

7 A. I retired on January 2nd, 1999.

8 Q. While employed by ATF, did you have any involvement with

9 the National Tracing Center?



10 A. Yes, I was a special agent in charge of the National

11 Tracing Center from October, 1991 until October of 1998.

12 Q. So for approximately seven years, you were the supervising

13 agent in charge of the National Tracing Center?

14 A. That is correct.

15 Q. In that role, did you have any involvement in responding

16 to FOIA requests?

17 A. Yes, I did.

18 Q. What was your role?

19 A. From October of 91 until mid 1994, I responded to all the

20 FOIA requests that were sent to me by the disclosure branch of

21 ATF.

22 I performed all the queries on the Firearms Tracing

23 System to respond to the requests.

24 Q. Can you explain what a query is?

25 A. Yes, it's just asking the computer database to provide you

[169]

1 with information that you are looking for.

2 An example, a lot of requests would be, the City of

3 Chicago would want to know how many guns were traced in a

particular year. I would ask the computer to produce that
information in a query.
Q. And while you were at ATF, did they have a zip disc to
respond to FOIA requests?
A. No, they did not.
Q. And so how would you respond to each request?
A. At the time; from 91 to 94, we were in a main frame
operation, and most of the data—all my requests were hard
copy. I would produce a report after my query, and submit the
report to the disclosure branch.
Q. So you say you would have to write a query for each
separate request?
A. Yes.
Q. And in 1994, did you say someone else assumed this
responsibility?
A. Yes, the Tracing Center in 1994—we started expanding
the volume and the traces coming in, and there was more public
interest in what we were doing, a lot of academic research.



And I was able to justify a position of hiring a
computer specialist to perform the queries.
Q. Who did you hire at that time?
A. Jeffrey Heckel, H-e-c-k-e-l.

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Q. Then from 1994 forward, was Mr. Heckel responsible for
formulating these queries?
A. Yes. I would still work with him on occasion, or at least
on a disclosure request, I would work with him and I would
usually assign him the query—to perform the query.
Q. What type of database was this information stored on?
A. During my tenure there, it was a DB-2, on a main frame
system.
Q. Is the information currently stored on the DB-2 database?
A. From my knowledge, it's been converted to an oracle
database.
Q. And while you were the supervising agent in charge of the
National Tracing Center, did you have any involvement in

responding to requests from local law enforcement pursuant to
the Gun Control Act?
A. Yes, again, from 91 to mid 94, I did the queries
personally, and Mr. Heckel took over that responsibility.
Q. Mr. Nunziato, have you been retained by the City regarding
an action pending in Illinois State Court?
A. Yes, I have.
Q. And when were you retained?
A. I was retained in the summer of 1999.
Q. And for what purpose?
A. To help interpret the data provided by ATF from the
Firearms Tracing System.

[171]

Q. Are you being paid for your services in that matter?
A. Yes, I am.
Q. And are you being paid for the time spent here today?
A. Yes, I am.
Q. And how much are you being paid?
A. $200 an hour.
Q. If I could direct your attention to the information stored



in the Firearms Tracing System, Mr. Nunziato, can you explain
the format of how the information is stored in the Firearms
Tracing System?
A. Yes, the information. that was stored is stored in tables,
and within the table there are unique fields that contain
lines of information pertaining to that table, such as there
would be a table for weapons, and inside it, the weapons
table, there would be fields for the manufacturer, the model,
caliber, the weapon type, and such.
Q. So would each field contain a separate piece of
information?
A. Yes, it would.
Q. And could you just briefly describe some of the fields
that would be included in the individual table?
A. In an individual table, you would find a field for last
name, the first name, the middle initial, the date of birth,
place of birth, which would include the city of birth, the
state of birth, height, weight, sex,

[172]

Q. And if someone only wanted certain information from some of those fields, how would they go about extracting that information?

A. The query would just ask for what particular field you want in that table. Let's say, for example, for an individual table, you would ask for information that would be contai d in the individual table, and only specify the field that you would want information from.

Q. So is it possible to extract information from certain fields without redacting from all the other fields in that table?

A. Yes, it is.

Q. And how would that be done?

A. Again, the line of query, the query code to request the computer to only provide that information.

Q. Are you familiar with the term "query library"?

A. Yes.



Q. And what is a query library?

A. When I was doing queries, a lot of my queries were repetitious. Only a variable would have to change. And the system had a way of just storing all these queries that I could pull up and just change—like in a Word document on the computer, all I had to do was change a name or a date, or a date range. This way it prevented me from having to retype the

[173]

whole query. I just had to put in—change the variable.

Q. And I want to ask about the information stored in a particular field. Is it possible for ATF to extract just part of the information contained in a field?

A. Yes, if you would know how many characters would be in that field, you could just ask for a certain number of characters.

Q. And how would you go about that?

A. Again, it would be a line of code within a query that—

there are codes- within the code that you would just tell—

to just produce a certain query.

Q. For example, in the last name field, could ATF redact just

the last letter of the last name?

A. Yes.

Q. And how would they do that?

A. Again, in a query, they would have a command that would

just select the last name field with only the certain

character you wanted to see, the first character or last

character.

Q. And how long would it take to create such a code?

A. Five to ten minutes.

Q. I want to turn your attention to the recovery location

table. What fields are contained in the recovery location

table?

A. The recovery location table is usually a geographic place.

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It would include the street number, the street direction, the

street suffix, a city, a state, a zip code.



Q. And each piece of information again would be stored in a

separate field?

A. That is correct.

Q. So the zip code would be in a different field than the

street name, is that correct?

A. Yes.

Q. Mr. Nunziato, I would like to show you what's been marked

Plaintiff's Exhibit Number 1.

Your Honor, may I approach the witness.

THE COURT: You may.

BY MR. ROACHE:

Q. Mr. Nunziato, could you describe for me what Plaintiff's

Exhibit Number 1 is?

A. This looks like an example of the information that would

be stored in a recovery table.

Q. Okay. And, again, as you described, there would be

a field for the apartment number, street number, and the lines

across the top would be the various fields?

A. The line—the first line starting with apartment number,

street number, would be the fields that would be contained
within that table called recovery table.
Q. And, then, the first line is referred to as the existing
database. What is that information?

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A. That information would be an example of the type of data
that take would be stored in the particular fields, such as
apartment number would be 5H, street number would be 555, et
cetera.
Q. And that is the type of information that would be stored
in each particular field in the recovery location table?
A. Yes.
Q. And can you tell me what the redacted line shows in
Plaintiff's Exhibit Number 1?
A. The difference between the redacted line and the existing
database, instead of query, would have been written not
requesting information from apartment number, or the street



number or field within the recovery location table.
Q. And while you were at ATF, did you write queries to
extract information of this nature?
A. Similar to this.
Q. Okay. And how long would you estimate that it would take
to write a query to redact this information?
A. The query line to do this particular redaction would take
—would be five to ten minutes.
Q. And, again, what you've done in Plaintiff's Exhibit Number
1 is, you've redacted out the apartment number and street
number information, is that correct?
A. Yes.
Q. And then you would be extracting the street direction, the

[176]

street name, street suffix, state—city, state and zip code,
correct?
A. Correct.
Q. And you said it would take five to ten minutes to write
that query?
A. Yes.

Q. Mr. Nunziato, would you consider the extraction of this
information to be the creation of a new document?
A. No, because there is no document in the database. The
database was created to extract information from.
Q. Mr. Nunziato, based on your over 29 years of experience at
ATF, do you think that the release of the extracted
information as described in Plaintiff's Exhibit Number 1 could
reasonably be expected to interfere with law enforcement
purposes?
A. No, I do not.
Q. Why not?
A. It's just general information that has already been
released by the gun dealer and it's a just street name.
Q. Mr. Nunziato I would like to show you what's been marked
Plaintiff's Exhibit Number 2.
Your Honor, may I approach the witness.
THE COURT: You may.
BY MR. ROACHE:
Q. Mr. Nunziato, could you describe for me what Plaintiff's



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Exhibit Number 2 is?
A. This is an example of the data that would be found in the
individual table, the fields; last name, first name would be
filled within that table.
Q. So there would be a separate field for last name, first
name, and all of the items noted on the top of this document,
is that correct?
A. Yes, there would—all separate fields within the table.
Q. And the fields that are listed on this document, are these
all the fields that are included in the individual table?
A. No, there are additional fields such as—other street
information.
Q. Do you know why they were excluded from this chart?
A. Just to make it easier to print.
Q. And can you describe for me the information that's
contained in the line that is signified "existing database"?

17 A. Yes, this would be an example of the data that would be

18 stored in the individual field within the individual table;

19 for example, public would be representing last name, so it

20 would be in the last name field for this particular trace

21 Q. And this is typical of the information that would be

22 included in each separate field?

23 A. Yes, it would be.

24 Q. And just so I understand it, in the last name field, all

25 that would be in there is the last name Public, is that

[178]

1 correct?

2 A. That's correct.

3 Q. And there would be separate field for the first name

4 field?

5 A. Yes.

6 Q. Can you explain for me what option one shows?

7 A. Option one would show a query that was written to just

8 extract from the last name field the last character of the



9 first—of the last name, and the first character of the

10 first name, and not request apartment number or the street

11 number.

12 Q. And based on your experience at ATF, do you know how long

13 it would take to write such a query?

14 A. This again would be—to do this particular query, to

15 extract this, would be five to ten minutes.

16 Q. Okay. Just so I'm clear, on option one, what you have

17 done is extracted the last letter of the last name, is that

18 correct?

19 A. Correct.

20 Q. And from the first name field, you've extracted the first

21 letter of the first name?

22 A. Yes.

23 Q. Okay. And the query did not ask for any information from

24 the apartment number and street number field?

25 A. That is correct.

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1 Q. And the rest of the information was asked for from the

2 remaining fields?

A. Yes.

Q. Can you describe for me what's shown in option number two?

A. Yes, option number two would be, again, a query that would be written to request the last character in the last name, the first character in the first name fields, incorporated with the date of birth and city of birth, and have that information printed in on a query, and not requesting apartment number and street number again.

Q. And, again, based on your experience, how long do you think it would take to write such a query?

A. This would only take about ten minutes.

Q. And, again, just so I'm clear on what you've done, you've taken the last name from the last name field—last letter from the last name field?

A. Correct.

Q. And the first letter from the first name field?

A. Correct.

Q. The date of birth?

A. Correct.



Q. From the date of birth field, and the city of birth from the city of birth field?

A. Yes.

Q. And you've combined all those characters and entered them

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into the last name field?

A. Yes.

Q. And, again, you are just extracting information that's currently in the database?

A. Correct.

* * * * *

Transcript of Proceedings, January 31, 2001
**[p.182, line 6 to p. 198, line 2]**

**Nunziato - Direct by Roache**

[182]

Q. Mr. Nunziato, I would like to turn your attention back to
Plaintiff's Exhibit Number 2.
A. Yes, sir.
Q. Now, I ask you if the information contained in Plaintiff's
Exhibit Number 2 accurately depicts the type of information
that would be included in the individual table?
A. Yes, the existing database line would be an accurate
representation.
Q. Now, I think you were describing for us what option two
represented on Plaintiff's Exhibit Number 2?
A. Yes, option two—I don't have my exhibits up here.
Maybe it would be a little easier.
MR. ROACHE: Your Honor, may I approach the witness.
THE COURT: You may.
A. Thank you.
BY MR. ROACHE:



Q. Could you explain for me what's depicted in option number
two on Plaintiff's Exhibit Number 2?
A. Yes, option number two is an extraction of the data that
would be existing in the database, with some redaction, by

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taking the last character of the first name, the first
character of the first name, the date of birth, and the city
of birth, and not asking for the apartment number or the
street number.
Q. And how would you extract that information?
A. Again, a query would be written to request this.
Q. And based on your experience, how long would it take to
create such a query?
A. About ten minutes.
Q. I just want to be clear on what you've done. You've taken
from the last name field the last letter of the last name, is
that correct?
A. Correct.

14 Q. And the—and from the first name field, the first letter

15 of the first name?

16 A. That is correct.

17 Q. And you haven't taken any information from the apartment

18 number field, is that correct?

19 A. That's correct.

20 Q. And you haven't taken any information from the street

21 number field?

22 A. That's correct.

23 Q. And you have taken the date of birth from the date of

24 birth field, is that correct?

25 A. Yes.

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1 Q. And the city of birth from the city of birth field?

2 A. That is correct.

3 Q. And you have combined all that information into the last

4 name field, is that correct?

5 A. Yes. When a query is written, you have columns that you

6 would label, and you could label that column "last name

7 field".



8 Q. And turning back to option number one just for a moment,

9 Mr. Nunziato, do you consider the extraction of information

10 you did there to be the creation of a new document?

11 A. No, I don't.

12 Q. And based on your 29 years experience at ATF, do you

13 believe that the release of the information contained in

14 option number one could reasonably be expected to interfere

15 with law enforcement purposes?

16 A. I do not expect it to interfere with law enforcement.

17 Q. Why not?

18 A. In my experience in working at the Tracing Center with

19 thousands of traces, I've never had a problem with this type

20 of information, if it was released, interfering with an

21 investigation.

22 Q. If I could turn your attention now to option number two,

23 Mr. Nunziato, would you consider the extraction of information

24 contained in option number two to be the creation of a new

25 document?

[185]

A. No, I wouldn't.

Q. And, again, based on your over 29 years experience at ATF,

do you think that the release of information—or do you

believe that the release of information contained in option

number two could reasonably be expected to interfere with law

enforcement purposes?

A. It would not interfere with law enforcement.

Q. Why not?

A. Again, my experience has shown that the

information—when we release this type of data—had had no

ill effect on law enforcement.

Q. And if I could turn your attention to option number three,

Mr. Nunziato, could you explain to me what option number three

is?

A. Yes, option number three is taking information that is

displayed in option number two under the last name column, and

creating a unique identifier for that particular information



that you are looking at in option two under the last name

field, and again not asking for the apartment number or street

number.

Q. And can you explain to me how you would get to option

number three?

A. There is software out there that you would use to create

this random number or this unique identifier.

Q. Mr. Nunziato, again based on your 29 years experience at

[186]

ATF, do you think that the release of information contained in

option number three could reasonably be expected to interfere

with law enforcement purposes?

A. No, I do not.

Q. Why not?

A. Again, we release similar information, not with the last

name coded to that manner, but with other information that

would be similar to this, and it has not had any ill effect.

Q. Mr. Nunziato, while serving as supervising agent in charge of the Tracing Center, have you ever had a query created that only requested partial information from a field?

A. Yes, we have.

Q. And when was that?

A. That was probably in 1995, where—when I was at the Tracing Center. We were looking at a way to correct some spellings on the last name and the first name. The names were usually given to us over the telephone. There are some strange ways of spelling names. Could you imagine how Nunziato would be spelled if it was just phonically given to you. So we were looking for some research we were doing with a new database we called project lead to better utilize names and analyze data within the tracing system. We tried to come up with a better way of looking at it, so we extracted some data from—

[187]

Q. So the purpose was to try and clean up the information in



the database?

A. Yes, and also have a better way for the computer to look at names.

Q. Okay. And how did you go about trying to clean up the names in the database?

A. There is a multi-part step. Basically what we did is, we took the first three characters of the last name, the first three characters of the first name, the date of birth which included the month, the year and the day, and the city of birth. We created a query to extract that data from the tracing system so we could start comparing it looking for similar names to make sure the spelling is right, to see if we could correct some spelling errors.

Q. So just so I understand this, this information was contained in the individual table, is that correct?

A. Yes, we extracted it from the individual table.

Q. Okay. And in the last name field in that table, you only

20 extracted the first three letters of the last name, is that

21 correct?

22 A. That is correct.

23 Q. And in the first name field, you only extracted the first

24 three letters of the first name, is that correct?

25 A. That's correct.

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1 Q. And you combined that information with the date of birth

2 and city of birth, correct?

3 A. Yes.

4 Q. And you put all those into one field, is that correct?

5 A. When you do a query, you have to—fields are just blank.

6 There is column one, column two, column three. They are not

7 like you depict up there. You have to type it in, what the

8 column represents.

9 So we just made that column represent the name.

10 Q. And I guess if you could explain how you extract this

11 information?

12 A. A query was written where the query was written to—and



13 there is a line and a query that would be somewhat—you

14 would select the last name but only print the first three

15 characters, select the first name, and only print the first

16 three characters; and, then, again, asking for the date of

17 birth and the city of birth that appear in a different area.

18 Q. And did you formulate this query?

19 A. I worked with my computer specialist and some researchers

20 to formulate the query. It was not my original idea how to do

21 this.

22 Q. And how long did it take them just to do this part of the

23 query?

24 A. Just this query was 10 minutes, 15 minutes at the max.

25 Q. And did the system that was being used by ATF at that time

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have the capacity to perform the query and to extract the

requested information?

A. Yes, it did.

Q. Are you familiar with a unique identifier code?

A. Yes, I am.

Q. And what is a unique identifier code?

A. Basically it would be like—a Social Security number

could be considered a unique identifier for an individual.

Q. And while you were at ATF, did you ever contemplate or did

ATF ever contemplate using unique identifier codes for

individuals?

A. Yes, we did.

Q. Was that ever implemented?

A. We studied it, we came up with—the reason why we were

looking for a unique identifier for names is to try to link

people together that were actually the same person.

And to make it more efficient for the computer to do

this, it was a recommendation that I made for law enforcement



based on some of the research we did. I'm not sure if it was

ever implemented.

Q. Was it determined that it was feasible to enter such a

unique identifier code?

A. Yes.

Q. While you were at ATF, were you involved in any trace

requests?

[190]

A. Yes, as a street agent, I submitted many trace requests to

the National Tracing Center. And while I was at the National

Tracing Center, I oversaw the process probably of four to

500,000 tracers.

Q. I would like you to focus on your time at the National

Tracing Center. Could you describe for me how a trace is

initiated?

A. Yes, local law enforcement or a Federal law enforcement

agency would recover a gun that was involved in some type of

police action. It would send the description of the firearm to the National Tracing Center, which would include the manufacturer's name, the caliber, serial number, make and model, weapon type. Once the Tracing Center received this information, it would be entered into the Firearms Tracing System, and the individual person that was processing the trace—we call them tracers for short—the tracer would then access the Firearms Tracing Center knowing who manufactured the weapon, go through what we call the firearms licensing system to find out information—to determine where this—was located.

Q. If we could break it—down just a little bit. When you first—or when the tracer first received the trace request, what would they do first?

A. They would contact the manufacturer.

Q. How would they know who the manufacturer was?



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A. The weapon by Federal law has to have the manufacturer's name or, if the gun was made overseas, the importer's name on the frame; for example, Smith & Wesson. You would then go into the Federal licensing system, query Smith & Wesson to obtain the telephone number and a contact person.

Q. And after you determined who the manufacturer was—or after the tracer determined who the manufacturer was, what would they do next?

A. The tracer would contact the manufacturer to request a disposition of the firearm—or what did the manufacturer do with the weapon. The manufacturer would respond by either giving the name of the dealer, a dealer number or other indication of what Federal firearms dealer they transferred the firearm to.

Q. And after the tracer determined who that next person or

entity was in the line of distribution, what would the tracer
do next?
A. They would update the Firearms Tracing System with that
information, and they would then contact that dealer which we
would normally call wholesaler.
They would contact the wholesaler, again, using the
firearms licensing system to get the information—how to
contact that wholesaler, contact the wholesaler and ask for a
disposition of the firearm.

[192]

Q. Okay. And after they found out who the wholesaler had
sold that firearm to, what would the tracer do next?
A. The tracer would then enter that information in the
firearms tracing system and contact—which we would normally
assume to be a retail dealer, and ask the retail dealer how
they disposed—or the disposition of the firearm which we
were looking for as the individual that purchased the firearm



from the retail dealer.
Q. Okay. And what information would they request from the
dealer?
A. The dealer would normally use the Government form, the ATF
Form 4473 which a purchaser is required by Federal law to
complete.
And we would ask for the individual's name, first
name, last name, middle initial, date of birth, city-
—place
of birth, their height, their weight, their sex, and the type
of identification they used to prove that they were actually
the person that purchased the gun.
Q. So ATF was actually receiving the name of the purchaser
from the dealer.
A. Yes.
Q. And the dealer is notified that that gun has been
recovered in relation to a crime, is that right?
A. There is many newsletters. We have a firearms licensing
newsletter that goes out explaining how the tracing system

[193]

works; we've conducted numerous seminars where they know that

the firearm was recovered in a police action. We normally

refer to it as a crime gun.

Q. And is the dealer prohibited from then contacting the

purchaser?

A. No, the dealer is not.

Q. Are you familiar with the "do not contact" field?

A. Yes, I am.

Q. Can you describe what the "do not contact" field is?

A. When I first started at the Tracing Center, when there was

an investigation on a Federal firearms dealer—it's kind of

unique the way they handled it. It was all done on paper.

And many times, we would we would complete the trace

and mail the trace back to another agency saying contact this

dealer because he's under investigation, which kind of

interfered with why we wouldn't do it.

So we created a new system in the database in 94 to



prevent this from happening. So that if a dealer was under

investigation, it would not leave the Tracing Center.

Q. Were there requirements for the use of the "do not

contact" field?

(Brief interruption.)

BY MR. ROACHE:

Q. Were there requirements for the use of the "do not

contact" field?

[194]

A. Yes, the requirements I instituted—the policy I had at

the time when I was at the Tracing Center was requesting law

enforcement agencies, State, local or Federal, to submit a

letter to me on a letterhead requesting that we not contact

the specific dealer.

They would provide it by the name or number if they

had it. And we required them to update this information every

30 days.

Q. And while you were at ATF, was the information that was

contained in the "do not contact" field also entered into the

Firearms Tracing System?

A. No, because initially there was a problem where if it was

entered, it would still be produced on the final trace report.

So we immediately—once we realized we had another problem,

we corrected it so that when a dealer number was entered that

was associated with a "do not contact", the screen would turn

pink, and there would be a—basically a warning for

them—for the tracer to contact one of the agents or ATF

inspectors that worked in the building to proceed with the

trace.

And that inspector or agent would contact the

requested individual that put the "do not contact" request in

and asked them if they wanted us to continue with the trace or

to stop it.

If it was stopped, there wouldn't be any information



[195]

on the trace report concerning that dealer.

Q. So do I understand correctly that the purpose of the "do

not contact" field was to signify active investigations?

A. Yes, it was.

Q. Do you know if the City of Chicago has requested any

information from the "do not contact" field?

A. The City of Chicago did not request data from that

particular field.

Q. Are you familiar with a "suspect gun" field?

A. Yes, I am.

Q. What is a "suspect gun" field?

A. A police officer or a law enforcement agency will come

across a description of a firearm, and maybe that the guns

were bought at a gun show, and an informant advised the police

officer that John Crook bought 50 guns at this gun show, which

now the police officer—just like you know that if a gun has

ever turned up in a crime, and normally we cannot trace those

guns if they were in the normal procedure.
So that police officer, again, on a letterhead would
send us a list of the guns with a case number, requesting us
to put it in the suspect gun file.
And, then, if a trace was traced to that particular
gun, if we could associate it, the gun with the recovery with
that suspect gun file, again, the police officer that
requested the suspect gun flag would be notified and we would

[196]

advise them that one of the guns they had a watch on was
recovered and provide them with the information on the
recovery.
Q. Again, the purpose of the suspect gun field was to signify
active investigations?
A. Yes, it was.
Q. And are you familiar with a suspect name field?
A. Yes.
Q. Can you describe what a suspect name field is?
A. The suspect name field is very similar to the suspect gun
field. Occasionally we would have individuals that—it



usually related to homicides, where somebody killed and their
gun collection was stolen, and maybe we didn't know where
the—we didn't have a list of the weapons that belonged to
that person.
So we would put their names in this suspect name
field, so if a weapon was ever traced and it connected to that
individual, we would then contact the police agency that
requested it for—to give them potential leads on maybe
somebody that was involved with the homicide.
Q. And the purpose of the suspect name table, again, was to
identify active investigations?
A. Yes, it was.
Q. And do you know if the City of Chicago had requested any
information from either the suspect gun or the suspect name

[197]

table?
A. The City of Chicago did not request information from
either one of those fields.

Q. Are you familiar with the administrative record table?

A. Yes, I'm.

Q. And can you describe that table for us?

A. Yes, the table is a kind of—it was added onto the tracing system to allow agents within ATF to put information in on a particular gun trace, so that if another agent was interested in the trace, they could review the administrative table to see if there was any other interest on that particular gun, such as if it was related to an investigation they had.

And the same thing with the local police agencies.

At one time when you had—the tracing system was open, and the idea was it would be open to all our field offices, so that they could monitor the activity in this administrative table.

Q. So the administrative record table was used to monitor active investigations?

A. It could be, yes. You could put your active



investigations in there so that someone else would know that that gun was involved in an active investigation.

Q. And has the City of Chicago requested any information from the administrative record table?

[198]

A. The City of Chicago did not request any data from that table.

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Transcript of Proceedings, January 31, 2001
**[p. 199 line 11 to p. 201 line 11]**

**Nunziato - Direct by Roache**

[199]

Q. can you describe whether in a trace report, there would be

any information relating to an FFL?

A. After a trace is completed by a tracer and goes through

the process of contacting the manufacturer, the wholesale or

retail dealer, the individual is identified, a report is

generated by the firearms—the firearms tracing system that

could be mailed back to the requester.

This report would contain the name of the requester,

a complete description of the firearm, and if there is dealers

involved, like an importer or a wholesaler, it would provide

the dealer number, the dealer name, the dealer address, a

dealer telephone number, and then the individual that

purchased the gun, their address or description, and if there

is any possessors, there be would be similar information on



the possessor.

[200]

And this report would be generated and mailed back to

the requester.

Q. So the trace report would include the name, the number and

address for the FFL, is that correct?

A. It would contain the name, what we call the FFL number,

and the address of the dealer, correct.

Q. Based on your over 29 years of experience at ATF, do you

think that the release of the FFL name, number and address

could reasonably be expected to interfere with law enforcement

purposes?

A. No, I do not.

Q. Why not?

A. Again, because this information has been released and

there is—it's common knowledge, these people are in

business to sell guns, so it's not that they are uniquely

known only to ATF.

It's common knowledge that they are in the gun

business.

Q. To whom has the information already been released?

A. You could buy the licensing system database from ATF for

mailing purposes, if you are in the gun business, to send out

information, fliers.

Q. And is it correct to say that the dealer is notified of

the trace as well?

A. Yes, actually two dealers. The dealer that sold the gun

[201]

to a dealer, and the dealer that we contact.

Q. And then the dealer knows obviously the purchaser that

they sold the gun to?

A. That is correct.

Q. And if there was any concern, the agency--either the

local law enforcement agency or ATF could use the "do not

contact" field, is that correct?

A. That is correct.

Q. And, again, the City of Chicago has not requested any



information from the "do not contact" field?

A. That is correct.

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Transcript of Proceedings, January 31,2001
**[p.248 line 4 to p. 253, line 12]**

**Van Aken - Direct by Getter**

[248]

Q. Sir, could you state your name, and spell your last name

for the court?

A. Sure. My name is John Van Aken, V-a-n A-k-e-n.

Q. I would just ask, to assist our court reporter, if you

could speak somewhat slowly and wait until I've finished my

question before you answer yours.

A. Certainly.

Q. Sir, are you presently employed?

A. Yes, I am.

Q. And by whom are you employed?

A. The Pharmacia Corporation. The local office is based up

at Skokie.

Q. What is the Pharmacia Corporation?

A. They are a pharmaceutical manufacturer. I actually work

in the research and development area.

Q. Generally speaking, what do you do. What are your

responsibilities?



A. My responsibilities at Pharmacia are to help conduct

clinical trials on different new—actually—pharmaceutical

compounds.

What I primarily do for them is, I essentially work

with their databases. I'm an Oracle programmer and a systems

[249]

applications analyst, the whole nine yards.

I guess the best way to put it is, I maintain the

database; it's an oracle database. I'm the project lead for

several different applications which work with it.

I'm responsible for making sure that the main actual

application which is called DLB recorder—that's a clinical

trials database which we store millions of rows of data in,

monthly sometimes, and it is actually up and running, and the

users have full and complete access to it 24-7.

And I act as a technical resource for other members

of the group in terms of programming oracle applications and

working with the database.

Q. Could you tell the Court your educational background,

please?

A. Certainly. I graduated in 1989 with a bachelor's of

science from Trinity University, and that's my formal

education. I've also—

Q. What was your degree in, sir?

A. I'm sorry, bachelor's of science in computer science.

Q. Okay.

A. And I also—given the fact that the computer industry

changes so quickly, I'm fairly constantly, every six months

or so, taking place in ongoing continuing education with

Oracle databases, making sure I understand the latest upgrades

and what the new versions do, things like that.

[250]

Q. Could you describe your employment history?

A. Sure. After graduating from college, I moved up to

Chicago and became the information systems manager for a—

for the Rehabilitation Institute of Chicago, specifically for



the spinal cord research program that was funded by a grant

from the National Institutes of Health.

My job there included creating and maintaining a

database of spinal cord injury information, writing

applications to allow the data entry and retrieval of that

information, the spinal cord data, and to create reports,

presentations, graphics, slides, based upon that information

so that the doctors, associated with our group were able to go

out and present the information on a public basis.

Q. Is it fair to say you had a good deal of interaction with

computers when you were in that position?

A. Yes, it is.

Q. What was your next—I'm sorry, how long were you with

the Rehab Center?

A. For five years, from 1989 until 1994.

Q. What was your next position?

A. The next position I took was with the Chicago Partnership

Board. It was a securities—a securities company here in

Chicago.

24 We had at that point in time a Legacy system—I
25 call it Legacy simply because it's old and falling apart—

[251]

1 which we were in the process of moving to an oracle database
2 and writing applications to use this.
3 I was the project lead at that point in time to
4 actually handle the transition between the two systems.
5 Q. From the Legacy to Oracle?
6 A. Yes, sir. And at that point in time, I also wrote
7 applications, once we translated it, to Oracle, in order for
8 the traders to be able to use this information, again writing
9 queries, doing data analysis, trying to gives the folks as
10 best information that they can to do their job.
11 I also acted in a capacity for Internet applications,
12 putting the first web server together for the company, things
13 along those lines.
14 And that pretty much covers the base there.
15 Q. How long were you there?
16 A. I was there for a little over two years.
17 Q. And what was your next position?



18 A. My next position was the position I currently hold at the
19 Pharmacia Corporation.
20 Q. Could you tell me what sort of computer-—computer
21 oriented activities or responsibilities you have with
22 Pharmacia?
23 A. Yeah, we—we actually maintain a cluster of Hewlett
24 Packard servers which run on the UNIX operating system. They
25 contain—they hold our databases—they contain or they

[252]

1 hold—actually, the databases actually live on these
2 servers.
3 We make sure they are up and running. We write
4 applications for them. We retrieve data on a regular basis,
5 we—I act as—you know, essentially a project lead.
6 A lot of times, I'm the guy that goes to the
7 customers to find out the requirements for what they need the
8 system to be able to do, or an external system to be able to
9 do, and we write specs, we write the applications, we document
10 and validate them.

We pretty much—since it's a regulated industry
with the FDA, we have to keep pretty careful documentation of
what we are doing and how we validate the systems.
It takes probably actually more time than actual
coding themselves sometimes.
Q. Does much of your responsibility involve oracle software
in your present job?
A. Pretty much all of my responsibility requires a knowledge
of working with oracle, its applications, development, in my
current position. That's all I'm doing right now.
Q. Are you involved in entering data into Oracle systems?
A. Not really, no. I'm the guy that writes the applications
that allow other people to enter data into oracle at this
point in time.
Q. Do you work with the data in the in oracle software?

[253]

A. Yes, I do.
Q. Are you capable of querying the oracle?
A. Yeah, you pretty much have to do that on a daily basis in



order to figure out sometimes what the data actually contains,
or wants to do with the data in order to validate the actual
running of our applications.
Q. Is it safe to say you are skilled, highly skilled in the
use of oracle?
A. Yes, it is.
MR. GETTER: At this point, your Honor, I, would offer
Mr. Van Aken as an expert in the area of database theory with
a particular emphasis on Oracle systems.

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Transcript of Proceedings, January 31, 2001
**[p. 256, lines 14-15]**

**Van Aken - voir dire by Rivera**

[256]

14 THE COURT: Overruled. The Court will accept this

15 witness as qualified on the Oracle systems.

* * * * *



Transcript of Proceedings, January 31, 2001
**[p.265, line 20 to p. 266 line 13]**

**Van Aken - Direct by Getter**

[265]

20 Q. Could you look at what's marked as Exhibit 1, Plaintiff's

21 Exhibit 1.

22 A. 2 maybe?

23 Q. I'm sorry, this is Exhibit 2. I apologize.

24 A. No problem. If we wanted to retrieve—just for the

25 record, this is entitled, "Proposed redactions of

[266]

1 purchaser/possessor data", correct.

2 What is your understanding of what this represents?

3 A. Well, these are three different options of ways to either

4 redact or encrypt certain information from the database and,

5 therefore, eliminating some of the information that you might

6 otherwise be able to retrieve from just a straight select

7 statement.

8 Q. If we wanted to retrieve the first letter of the first

9 name, the last letter of the last name, but leave out the

10 remaining letters of those names, and also not retrieve the

11 apartment number or street number but retrieve the rest of the

12 fields in that database,could you do that?

13 A. Certainly

* * * * *



Transcript of Proceedings, January 31, 2001
**[p.267, line 13 to p. 270, line 16]**

**Van Aken - Direct by Getter**

[267]

13 Q. Is that a complicated query to enter?

14 A. No, that is not a complicated query.

15 Q. How long do you think it would take you to create such a

16 query?

17 A. Two, three minutes.

18 Q. Two or three minute?

19 A. Yeah, on a bad day.

20 Q. Do you have an opinion as to how hard—strike that.

21 Would performing the function represented by option

22 one in Exhibit 2, in your view, constitute the creation of a

23 document?

24 A. No, sir, it would not.

25 Q. Why not?

[268]

1 A. Because you are merely getting information that's already

2 in the database.

3 My idea of creating a new document would be the

actual insertion of new data into the database. So if I were
to put a new row onto this table, a new record, such as you've
got there, that would be creating a new document.
But all we are doing here is, we are reporting on the
data that's currently in the database, but we are only
reporting on parts of it specifically with option one.
Q. Do you recall the testimony last week of Mr. Foreman from
ATF who said that he would need to debug the data after he
retrieved it?
A. Yes, I do.
Q. What does it mean to debug?
A. Well I don't think he's really debugging the data after he
retrieves it. Everybody makes mistakes when they are typing.
I mean, I'm hardly the world's best typist.
And if I make a mistake in actually creating the
query, the database will have a hard time reading that query
and understanding what I want, and will give me an error
message.
Things along those lines would be more considered



debugging.
Q. How long do you think it would take you to debug option
one?

[269]

A It's—we are talking about a very minimal number of
words of code here. I would—a couple of minutes tops, if
for some reason I missed a comma someplace that I couldn't
see.
I mean, it would be hardly a problem to debug option
one.
Q. Could you look at option two?
A. Yes.
Q. Of exhibit—Plaintiff's Exhibit 2.
A. Uh hum.
Q. Could someone write a query that deletes the same
information as in option one?
A. Uh hum.
Q. But additionally fuses the two remaining letters of the
name?
A. Uh hum.

Q. With the date, month, and year of birth, and the City of
birth, to create a unique identifying code?
A. Yes, they could.
Q. How would you do that?
A. There is another function in the database, and you are
going to find pretty quickly here there is an awful lot of
functions that we take about, and that's called concatenation.
Q. Say that again.
A. Called concatenation.

[270]

Q. What is concatenation?
A. It's like adding pieces of a string together to get one
whole. So what I would do is, I would add that substring of
the last name, the substring of the first name, the—I would
have to convert the date of birth into a text field, but again
adding that as well, plus adding the city of birth.
And what would happen is, it would all be reported as
in one item when the query is output. It's pretty
straightforward.



Q. How difficult would that be to do?
A. Again, the query itself would just take a couple of
minutes to write.
Q. And do you have an opinion as to how long it might take
too debug that data report or extraction?
A. Ideally I never have to debug anything, but if I did, it
wouldn't take too long, a couple of minutes.

* * * * *

Transcript of Proceedings, January 31, 2001
**[p.271, lines 16-25]**

**Van Aken - Direct by Getter**

[271]

16 Q. Would performing what we described as option two

17 constitute in your mind the creation of a document?

18 A. No, it would not.

19 Q. Why not?

20 A. Because, again, you are working with data that's already

21 there, and you are simply performing a calculation on that

22 data.

23 Q. Could we do the same thing as with option two but,

24 instead, encrypt the resulting code, alphanumeric code?

25 A. Yeah, you could.

* * * * *



Transcript of Proceedings, January 31, 2001
**[p.273, line 20 to p. 274, line 16]**

**Van Aken - Direct by Getter**

[273]

20 Q. How long would it take you to encrypt the alphanumeric

21 code?

22 A. In other words, write the select statement which would

23 encrypt it?

24 Q. Yes.

25 A. That actually would take a little longer because there is

[274]

1 a bit more of a process to go through. First, you've got to

2 take the substring and, then, you have to do the

3 concatenation, and you have to do the encryption.

4 But, again, five, six, seven minutes. And, again,

5 once you start getting debugging time, you have more to play

6 with, so that process could take a few minutes longer as well.

7 But, again, it's a pretty straightforward query that

8 you are writing.

9 Q. Would performing the function—would performing the

10 encryption of the alphanumeric code in your mind constitute

11 the creation of a document?

12 A. No, again, you are just performing a calculation. In this

13 case, it's called a translation of data that already exists in

14 a database. You are not adding anything to it.

15 So to me that doesn't constitute creating a new

16 anything. You are just transforming something.

* * * * *



Transcript of Proceedings, January 31, 2001
**[p.293, line 3 to p. 295, line 4]**

**Van Aken - Redirect by Getter**

[293]

3 Q. Do you recall that you received some questions from

4 Mr. Rivera about how breakable that code might be?

5 A. Yes, I did.

6 Q. If you wanted to, could you take the third letter of the

7 first name and the fourth letter of the last name?

8 A. Absolutely. There is—the substring gives you the

9 flexibility to pretty much get any piece of a word you want

10 and any number of letters that you want.

11 So, sure, that's easy enough done.

12 Q. Theoretically could ATF ask for different characters for

13 each row, so that it's sort of scrambled as to which one you

14 are using?

15 A. Not in a simple select statement. At that point in time,

16 you are really getting into writing a program that would keep

17 track of how many—or where you are—what rows you are.

18 supposed to be on, what you are supposed to be doing on any

19 given point in time.

20 You could do it. It could be done. I won't go into

21 the technical end of it but, yeah, it could be done. But it's

22 not a simple select statement, and it's not something that I

23 could do in five minutes.` It might take 30 minutes. But it

24 could be done.

25 Q. So 30 minutes instead of five minutes, and it could be

[294]

1 done?

2 A. Yeah, it's pretty easily said.

3 Q. But if you wanted to keep it to five minutes, you could

4 just pull out the third and fourth letter, if you wanted to?

5 A. Certainly.

6 Q. And just so I understand this, going back to option three

7 —

8 A. Yes, sir.



9 Q. When the unique code comes out, do I understand correctly

10 that what you are doing is not—in order to get that unique

11 code, you enter some sort of query, is that right?

12 A. You could make that translation statement part of a query

13 to retrieve the rows in the table, yes.

14 Q. So you don't actually need to go into the database to

15 alter the data—to change around the data that's in there,

16 do you?

17 A. No, sir, you do not.

18 Q. You just enter a query that has the system switch around

19 some of the numbers?

20 A. Sure, it leaves the existing data intact, but what it does

21 is, it reports the encrypted by performing this calculation

22 during the query.

23 Q. So the database stays the same but your report is what

24 encrypted?

25 A. Yes, sir, that would be the case.

[295]

Q. And in your mind, that's not creating a new document, is it?

A. No, again, this is a manipulation of existing data. There no new data being input into the system.